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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. 681.

THE BROOKLYN AND NEW YORK FERRY COMPANY, PLAINTIFF IN ERROR,

vs.

KATIE J. MacMAHON, ADMINISTRATRIX OF THE GOODS, CHATTELS, AND CREDITS OF JOHN JOSEPH MacMAHON, DECEASED.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

FILED DECEMBER 31, 1896.

(16,460.)

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INDEX.

	Original.	Print.
Writ of error	*a*	1
Petition for writ of error	*c*	2
Assignment of errors	*i*	5
Supersedeas bond	*o*	8
Citation	*t*	10
Proof of service of citation	*u*	10
Caption	*v*	11
Record on appeal	*v*	11
Statement required by rule 41	*w*	11
Summons	1	12
Complaint	2	12
Answer	4	13
Minutes of trial	6	14
Judgment	7	15
Order denying motion for new trial	8	15
Notice of appeal	9	16

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JANUARY 20, 1897.

	Original.	Print.
Case	10	16
Evidence for plaintiff	11	17
Testimony of Manuel Gonzales	11	17
Charles L. McCann	19	21
Edwin G. Schutz	44	37
Charles H. Valentine	51	41
Mads Olsen	57	44
Charles R. Hughes	60	47
Charles A. Rogers	62	47
Mrs. Zorah Rogers	65	50
Benjamin Harling	70	53
William Bates	72	54
August Keller	75	55
Frank Sckecker	76	56
John Williamson	77	57
Joseph Grose	88	63
John Williamson (recalled)	89	64
Hamilton Graham	94	67
Frederick P. Hughes	102	71
Katie J. MacMahon	106	74
Plaintiff rests	107	74
Motion to dismiss (overruled)	107	75
Evidence for defendant	108	75
Testimony of Elias B. Dunn	108	75
John Owen	110	76
John V. Baulsir	116	80
Alfred T. Schultz	138	93
George McMullen	142	95
Frank B. Stoney	144	96
William Early	146	98
Frank B. Stoney (recalled)	148	99
William T. Raynor	148	99
Thomas B. Luther	154	103
James T. Flanning	157	104
Michael Delaney	160	106
John Owens	164	108
Charles E. O'Brien	165	109
George F. Armstrong	166	110
B. H. Hawkins	167	110
Henry Heisner	172	114
James Meehan	175	115
John V. Baulsir (recalled)	176	116
Defendant rests	179	117
Evidence for plaintiff in rebuttal	179	118
Testimony of Frederick P. Hughes (recalled)	179	118
Motion for nonsuit (overruled)	179	118
Judge's charge	180	118
Defendant's requests to charge and rulings thereon	183	120
Affidavit of no opinion	191	125
Consent as to case on appeal	192	125
Judge's certificate to case	192	125
Stipulation as to record	193	125

	Original.	Print.
Plaintiff's Exhibit No. 1—Map (offered at page 11)	194	125
No. 2—Statement showing the state of the tide (offered at page 107)	195	126
Defendant's Exhibit A—Diagram (offered at page 143)	196	126
B—Diagram (offered at page 143)	197	126
Order of affirmance on appeal from judgment	198	126
Clerk's certificate to order of affirmance	199	126
Judgment, November 23, 1896	200	127
Certified copy of order refusing certificate that a question of law is involved that ought to be reviewed by court of appeals	202	128
Affidavit of George Tompkins	205	128
Notice of refusal to allow appeal to court of appeals	206	129
Order to file papers showing refusal of appeal	207	129
Opinion of appellate division (Bradley, J.)	210	130
Clerk's certificate	218	134

a UNITED STATES OF AMERICA, *ss:*

The President of the United States to the supreme court of the State of New York, in the second judicial department of said State, and the judges thereof in said department, Greeting:

Because in the record and proceedings and also in the rendition of the judgment in a plea and suit which is in the said supreme court of the State of New York, in the second judicial department of said State, before you or some of you, said judgment having been affirmed by the appellate division of said supreme court in the second judicial department of said State, being the highest court of law and equity of the said State in which a decision could be had in the said suit between Katie J. MacMahon, administratrix of the goods, chattels, and credits of John Joseph MacMahon, deceased, and The Brooklyn and New York Ferry Company, a corporation created under and by virtue of the laws of said State, wherein a right was claimed under a statute of the United States and the decision was against the right claimed under said statute, a manifest error hath happened, to the great damage of the said The Brooklyn and New York Ferry Company, as by its complaint appears, we, being willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington within 30 days from the date hereof, in the said Supreme Court to be then and there held, that, the record of proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and custom of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the seventh day of December, in the year of our Lord one thousand eight hundred and ninety-six.

Seal of the Supreme Court of the United States.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

b [Endorsed:] E. 52 | 126. Supreme Court of the United States. The Brooklyn and New York Ferry Company, plaintiff in error, against Katie J. MacMahon, administratrix of the goods, chattels, and credits of John Joseph MacMahon, deceased, defendant in error. Writ of error. James & Thomas H. Troy, attorneys for plaintiff in error, No. 16 Court street, Brooklyn, New York. Filed Dec. 9, 1896. Allowed Dec. 7, '96. R. W. Peckham, asso. jus. Sup. Ct. U. S.

c Supreme Court of the United States.

THE BROOKLYN AND NEW YORK FERRY COMPANY, Plaintiff in Error, *against* KATIE J. MACMAHON, as Administratrix of the Goods, Chattels, and Credits of John Joseph MacMahon, Deceased, Defendant in Error.	Petition for Writ of Error.

To the Honorable Rufus W. Peckham, a justice of the Supreme Court of the United States:

The petition of The Brooklyn and New York Ferry Company respectfully shows—

That it was and is a corporation duly created under and by virtue of the laws of the State of New York, engaged in carrying freight and passengers on the East river, in said State, between the cities of New York and Brooklyn by means of steam ferry-boats navigated according to the laws of the United States.

That on the 21st day of July, 1895, a collision occurred on the waters of the East river aforesaid between one of the steam ferry-boats of your petitioner, to wit, the ferry-boat "New York," and a certain steam-launch which resulted in the death of one John Joseph MacMahon, one of the persons on board of said steam-launch and who was navigating and managing same.

That thereafter an action was brought against your petitioner by Katie J. MacMahon, the widow and administratrix of said John Joseph MacMahon, deceased, to recover damages in the sum of twenty-five thousand dollars ($25,000) under a provision of the code of civil procedure of said State, alleging that the death
d of the said John Joseph MacMahon was occasioned by the negligence of your petitioner and its agents and servants in the management and navigation of said ferry-boat.

That your petitioner duly appeared in said action and joined issue therein, denying the allegations of the complaint in said action and averring that the death of the deceased at the time and place aforesaid was caused and occasioned solely through and by reason of his own negligence and not otherwise.

That said action was tried before a jury in the said supreme court of the State of New York, in the county of Kings, and a verdict rendered against your petitioner and in favor of the plaintiff in said action for the sum of twenty-one thousand dollars.

That a motion was thereupon duly made by your petitioner for a new trial of said action, which was denied, and thereafter and on the 18th day of April, 1896, judgment was entered in the office of the clerk of the county of Kings on said verdict in favor of the said plaintiff and against your petitioner for twenty-three thousand one hundred and seventy-two dollars and sixty-five cents ($23,172.65).

That on the trial of said action it appeared that the steam-launch was under way in said river at the time of said collision, in violation of the laws of the United States aforesaid, without having been previously inspected, as required by the laws of said United States,

and was then and there being managed and navigated by the deceased, John Joseph MacMahon, and other persons, all of whom were entirely incompetent and without any licensed pilot or engineer or any person licensed in both capacities; that, although it was after sunset when said collision occurred, said steam-launch did not carry or display any light, as required by said laws; that the machinery of said steam-launch was defective and insufficient and broke down when so near to the ferry-boat aforesaid, which was navigating, plying, and proceeding according to law in the regular course
e of the business of said ferriage, as to cause said collision; that the persons in said steam-launch could have avoided the collision with the exercise of reasonable care on their part, and that the pilot of said ferry-boat exercised his best skill and judgment to avoid said collision.

That a motion was made at the close of the plaintiff's case for a nonsuit on grounds including the matters aforesaid, but the same was denied.

That your petitioner duly appealed from said judgment to the appellate division of the supreme court of the State of New York, in the second judicial department of said State, that being the State court having exclusive appellate jurisdiction in the premises, upon all the grounds aforesaid and upon the further ground that the collision was occasioned by the negligence of the said deceased, or that his negligence contributed thereto, and that certain other errors occurred on the trial of said action aforesaid and in the charge of said court prejudicial to the rights of your petitioner, all of which appear fully and at large in the record of said trial, and said appeal was duly argued and heard; but your petitioner shows that the said appellate court, on the 23rd day of November, 1896, notwithstanding the premises, unanimously decided and rendered judgment on said appeal in favor of the plaintiff in said suit and against your petitioner in all things affirming said judgment, with costs and disbursements, amounting to the sum of one hundred dollars and fifty-two cents, and said last-mentioned judgment was then and there entered in the office aforesaid.

That no appeal can be taken to the court of appeals of said State from said last-mentioned judgment without a certificate from said appellate division of the supreme court in the second judicial department of said State; that a question of law is involved which ought to be reviewed by the court of appeals of said State, or in the event of a refusal by said appellate division of the
f supreme court in the second judicial department of said State, unless an appeal is allowed by a judge of said court of appeals.

That your petitioner, by its attorney, has duly applied to said appellate division for such certificate, which was refused, and thereafter duly applied severally to the judges of the said court of appeals, and said last-mentioned judges severally refused to allow an appeal; that by reason of the premises and of the manifold errors, judgments, and decisions aforesaid your petitioner has been greatly injured and aggrieved.

That under the laws and constitution of said State of New York the said appellate division was and is the highest court in said State having jurisdiction in the premises to hear and determine an appeal from said judgment, and no further appeal from said original judgment or from the said judgment of affirmance can be taken to any other State court.

That said judgment of said appellate court is final, and your petitioner has no further means or redress from the errors and grievances aforesaid except such as may be afforded it by a writ of error to the Supreme Court of the United States.

Wherefore the said The Brooklyn and New York Ferry Company prays writ of error may issue in this behalf to the supreme court of the State of New York for the second judicial department of said State for the correction of the errors so complained of, and a transcript of the record, proceedings, and papers in this cause, duly authenticated, may be sent to the Supreme Court of the United States.

Dated Brooklyn, December 4th, 1896.

[Seal of the Brooklyn and New York Ferry Company.]

BROOKLYN & NEW YORK FERRY COMPANY,
By JOSEPH J. O'DONOHUE, *President.*
JAMES & THOMAS H. TROY,
Att'ys for Pl'ff in Error.

g UNITED STATES OF AMERICA, }
City and County of New York, } *ss:*

Joseph J. O'Donohue, being duly sworn, deposes and says that he is the president of The Brooklyn and New York Ferry Company, the petitioner above named, and that the foregoing petition is true of his own knowledge; that said petition is made and signed by him under and by direction of a resolution duly passed by the board of directors of said corporation, and the seal impressed thereon is the seal of said corporation and was so impressed thereon by the authority and direction of said board.

JOSEPH J. O'DONOHUE.

Sworn to before me this 4th day of December, 1896.

[Seal of Theodore A. Burnett, Notary Public, New York.]

THEODORE A. BURNETT,
Notary Public, 140, *N. Y. Co.*

h [Endorsed:] United States Supreme Court. The Brooklyn and New York Ferry Company, pl't'ff in error, against Katie J. MacMahon, administratrix of the goods, chattels, and credits of John Joseph MacMahon, deceased, def't in error. Copy petition for writ of error. James & Thomas H. Troy, attorneys for plaintiff in error, Phenix building, 16 Court street, Brooklyn, N. Y. Filed Dec. 9th, 1896. Rece'd Dec. 7, 1896. R. W. Peckham, asso. jus. Sup. Ct. U. S.

i Supreme Court of the United States.

THE BROOKLYN & NEW YORK FERRY COMPANY, Plaintiff in Error,
against
KATIE J. MACMAHON, as Administratrix of the Goods, Chattels, and Credits of John Joseph MacMahon, Deceased, Defendant in Error.
} Assignment of Errors.

The Brooklyn and New York Ferry Company, the plaintiff in error aforesaid, in connection with its application for a writ of error, makes the following assignments of error, which it avers occurred upon the trial, hearings, proceedings, and determination of the cause by the supreme court of the State of New York and by both the trial term and the appellate division of said court in the second judicial department of said State, to wit:

First. That the court erred in denying the motion made on behalf of the defendant, when the plaintiff rested, to dismiss the complaint on the following grounds:

That the evidence does not show any negligence on the part of the defendant, its agents or servants, which resulted in the death of the plaintiff's intestate.

That the evidence shows the death of the plaintiff's intestate was caused solely by his own negligence or by such negligence on his part as contributed thereto.

That the plaintiff's intestate and his associates in the joint use, management, and navigation of the boat upon the occasion in question and in the use, management, and operation of the machinery *they* were culpably careless and negligent, and that the accident and death of the plaintiff's intestate were and each of them was occasioned thereby or such carelessness or negligence contributed thereto.

j That such carelessness and negligence on the part of the plaintiff's intestate and his associates or of any one of them is legally attributable to all and each of them individually, including the plaintiff's intestate, and must be so regarded in this action, and whether such carelessness and negligence was the sole cause of such accident and death or merely contributed thereto the plaintiff cannot recover.

That the steam-launch at the time of said alleged collision was being navigated on the waters of the East river, in violation of the laws of the United States, without having a licensed pilot or engineer or a person qualified in both capacities, and did not carry or display a light or lights, as required by the laws of the United States, although it was after sunset.

That the alleged collision was occasioned by the negligence of the deceased, John Joseph MacMahon, and his associates navigating said steam-launch in the use, navigation, and management thereof.

Second. That the court erred in submitting the witness John V. Baulir to the following examination without the concurrence or

consent of the defendant after the witness, in response to the question of the court, had stated that he could see further than some young men at night.

By the COURT: Can you? Let me test you; look at that paper on the wall.

A. Yes, sir.

Q. Can you read that?

A. No, sir.

Q. Any part of it?

A. No, sir.

Q. That lower one off here; can you read any part of that?

A. No, sir.

Q. Look at the clock (calendar clock); can you read anything it says there?

k A. No, sir.

Q. Can you tell the time?

A. Yes, sir.

Q. Can you read either of those words below (day and month)?

A. No, sir; not from here.

Q. Or tell the figures?

A. No, sir.

Third. The court erred in denying the motion made on behalf of the defendant in said suit at the close of the testimony in the case to dismiss the complaint for each and every of the reasons stated and set forth in the foregoing first assignment of error.

Fourth. That the court erred in submitting the case to the jury for each and every of the reasons stated and set forth in the foregoing first assignment of error.

Fifth. That the court erred in instructing the jury, as requested by the plaintiff's counsel, "that if they should find that there was not daylight on the transaction, and that the small boat was perfectly visible without any artificial light, they are at liberty to find that the absence of light did not contribute to the accident."

Sixth. That the court erred in submitting to the jury the question as to whether the pilot of the ferry-boat New York did everything in his power to avoid the collision after he saw the launch, inasmuch as the said pilot, John V. Baulsir, testified that he did everything in his power to avoid the collision after he saw the launch, and also stated what he did, he being the only expert or person qualified to testify on that subject and being entirely uncontradicted as to that fact.

l Seventh. That the court erred in submitting to the jury the question whether the pilot in charge of the ferry-boat could have avoided the collision after he saw the launch, as there was no evidence in the case that such avoidance was possible, and the uncontradicted evidence of the pilot, who was the only competent witness, was to the contrary.

Eighth. That the court erred in permitting the jury to indulge in mere speculation on the subject, and for this purpose disregard an established fact in the case.

Ninth. That the court erred, inasmuch as it was established by the evidence and was not contradicted or disputed that the decedent and his associates navigating the launch were so doing in violation of the laws of the United States, the said launch not having been previously inspected, as required by said laws, and without a licensed pilot or engineer or person qualified in both capacities, as also required by said laws, and in failing to carry and display a light or lights in said launch, although it was after sunset, as required by said laws, and it not appearing that said violations did not cause said collisions in failing to instruct the jury to find a verdict for the defendant, the said The Brooklyn and New York Ferry Company.

Tenth. That the jury erred in finding a verdict for the plaintiff which was contrary to the evidence.

Eleventh. That the jury erred in finding a verdict for the plaintiff which was contrary to the instructions of the court.

Twelfth. That the jury erred in finding a verdict for the plaintiff which was contrary to law.

m Thirteenth. That the court erred in denying the motion to set — said verdict and for a new trial for the reasons and errors set forth in the several assignment- of errors aforesaid.

Fourteenth. That the appellate division of the supreme court of the State of New York, in the second judicial department of said State, erred in refusing to reverse said judgment for the errors set forth in the several assignments of error aforesaid.

Fifteenth. That said last-mentioned court erred in rendering judgment of affirmance of said original judgment against the defendant in error for all the reasons aforesaid.

And the said The Brooklyn and New York Ferry Company, the plaintiff in error, prays that the judgment aforesaid may be reversed, annulled, and altogether held for nought, and that it may be restored to all things which it hath lost by occasion of said judgment.

Dated December 7th, 1896.

JAMES AND THOMAS H. TROY,
Attorneys for Plaintiff in Error, No. 16 Court Street, Brooklyn, New York.

n [Endorsed:] United States Supreme Court. The Brooklyn and New York Ferry Company, pl'tff in error, against Katie J. MacMahon, administratrix of the goods, chattels, and credits of John Joseph MacMahon, deceased, def't in error. Copy assignment of errors. James & Thomas H. Troy, attorneys for plaintiff in error, Phenix building, 16 Court street, Brooklyn, N. Y. Filed Dec. 9th, 1896.

o Supreme Court of the United States.

THE BROOKLYN AND NEW YORK FERRY COMPANY, Plaintiff in Error, *against* KATIE J. MACMAHON, as Administratrix of the Goods, Chattels, and Credits of John Joseph MacMahon, Deceased, Defendant in Error.	Supersedeas Bond.

Know all men by these present that we, The Brooklyn and New York Ferry Company, as principal, and John G. Jenkins, residing at No. 830 Lafayette avenue, in the city of Brooklyn, and John Englis, residing at No. 196 Clinton avenue, in the city of Brooklyn, as sureties, are held and firmly bound, jointly and severally, unto the above-named Katie J. MacMahon, administratrix of the goods, chattels, and credits of John Joseph MacMahon, deceased, in the sum of thirty thousand dollars ($30,000), to be paid to the said Katie J. MacMahon, administratrix of the goods, chattels, and credits of John Joseph MacMahon, deceased; for the payment of which, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals — dated this seventh day of December, 1896.

Whereas the above bounden The Brooklyn and New York Ferry Company have prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the appellate division of the supreme court of the State of New York, in the second judicial department of said State, rendered on the 23rd day of November, 1896, in an action wherein the said Katie J.
p MacMahon, administratrix of the goods, chattels, and credits of John Joseph MacMahon, deceased, was and is plaintiff and the said The Brooklyn and New York Ferry Company was and is defendant in favor of the plaintiff and against the defendant therein, affirming a judgment theretofore and on the 18th day of April, 1896, for the sum of twenty-three thousand one hundred and seventy-two dollars and sixty-five cents rendered in said action in the supreme court of said State, with costs amounting to the sum of one hundred dollars and fifty-two cents:

Now, therefore, the condition of this obligation is such that if the above-bounden The Brooklyn and New York Ferry Company, the plaintiff in error aforesaid, shall prosecute its said writ to effect and, if it fail to make its plea good, shall answer all damages and costs, then this obligation shall be void; otherwise to remain in full force and virtue.

[CORPORATE SEAL.] BROOKLYN & NEW YORK FERRY COMPANY,
By JOSEPH J. O'DONOHUE,
President. [L. S.]
J. G. JENKINS. [L. S.]
JOHN ENGLES. [L. S.]

UNITED STATES OF AMERICA, } ss:
State of New York, County of Kings, }

On this seventh day of December, 1896, before me personally appeared John G. Jenkins and John Engles, to me personally known and known to me to be the persons described in and who executed the foregoing instrument as sureties therein, and severally acknowledged to me that they executed the same.

FRANK JENKINS,
[NOTARIAL SEAL.] *Notary Public, Kings Co., N. Y.*

UNITED STATES OF AMERICA, } ss:
State of New York, City & County of New York, }

On this 7th day of December, 1896, before me personally appeared James Affleck, secretary of the Brooklyn and New York Ferry Company, with whom I am personally acquainted, who, being by me duly sworn, said that he resided in the city of Yonkers; that he was the secretary of the Brooklyn and New York Ferry Company; that he knew the corporate seal of said company; that the seal affixed to the foregoing instrument was such corporate seal; that it was so affixed by the order of the board of directors of the said company; that he signed his name thereto by the like order as the secretary of the said corporation, and the said James Affleck further said that he was acquainted with Joseph J. O'Donohue and knew him to be the president of said company; that the signature of said Joseph J. O'Donohue subscribed to the said instrument was in the genuine handwriting of the said Joseph J. O'Donohue and was thereto subscribed by the like order of the said board of directors and in the presence of him, the said James Affleck.

JAMES AFFLECK.
[NOTARIAL SEAL.] FRED. L. ELDRIGE,
Notary Public, N. Y. City & Co.

UNITED STATES OF AMERICA, } ss:
State of New York, County of Kings, }

John G. Jenkins and John Engles, sureties on the foregoing bond, being duly and severally sworn, doth depose and say each for himself that he is a householder and freeholder within the State of New York and is worth the sum of sixty thousand dollars over and above his debts and liabilities and property exempt from levy or sale on execution.

J. G. JENKINS.
JOHN ENGLES.

Sworn to before me this 7th day of December, 1896.

FRANK JENKINS,
[NOTARIAL SEAL.] *Notary Public, Kings Co., N. Y.*

I hereby approve of the foregoing bond and of its form and sufficiency.

Dated Washington, D. C., December 7th, 1896.

R. W. PECKHAM,
Asso. Jus. S. C. of U. S.

s [Endorsed:] 52 | 126. United States Supreme Court. The Brooklyn and New York Ferry Company, pl'tff in error, against Katie J. MacMahon, administratrix of the goods, chattels, and credits of John Joseph MacMahon, deceased, def't in error. Copy supersedeas bond on writ of error. James & Thomas H. Troy, attorneys for plaintiff in error, Phenix building, 16 Court street, Brooklyn, N. Y. Filed Dec. 9, 1896.

t UNITED STATES OF AMERICA, *ss:*

To Katie J. MacMahon, as administratrix of the goods, chattels, and credits of John Joseph MacMahon, deceased, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of New York, wherein The Brooklyn and New York Ferry Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Rufus W. Peckham, associate justice of the Supreme Court of the United States, this seventh day of December, in the year of our Lord one thousand eight hundred and ninety-six.

R. W. PECKHAM,
Associate Justice of the Supreme Court of the United States.

u STATE OF NEW YORK, }
County of Kings, } *ss:*

On this ninth day of December, in the year of our Lord one thousand eight hundred and ninety-six, personally appeared George Tompkins before me, the subscriber, at the city of Brooklyn, in the county of Kings and State of New York, and makes oath that he delivered a true copy of the within citation to Charles J. Patterson, the attorney of the said Katie J. MacMahon, administratrix of the goods, chattels, and credits of John Joseph MacMahon, deceased, in the action in the supreme court of the State of New York, and that said copy was delivered to said attorney at number 26 Court street, in said city of Brooklyn, on this ninth (9th) day of December, 1896; and, further, that on said last-mentioned day, at said city, county, and State, he delivered a true copy of said citation to the said Katie J. MacMahon, personally, at number 213 Rodney street; that he left said copies with said persons severally, and said attorney ad-

mitted service of said citation in writing hereupon, and that he knew the said Katie J. MacMahon to be the same person to whom said citation is directed and the defendant in error herein, and that said Charles J. Patterson is such attorney as aforesaid.

GEORGE TOMPKINS.

Sworn to and subscribed the ninth day of December, A. D. 1896.

[Seal of William J. Lynch, Notary Public, Kings & N. Y. Co's.]

WILLIAM J. LYNCH,
Notary Public, Kings Co.

[Endorsed:] E. Original. Supreme Court of the United States. The Brooklyn and N. Y. Ferry Company, pl'ff in error, *vs.* Katie J. MacMahon, adm'x, &c., def't in error. Original citation. James & Thomas H. Troy, att'ys for pl'ff in error, 16 Court St. I hereby admit service of the within citation. Dated Dec. 9th, 1896. C. J. Patterson. Filed Dec. 9, 1896.

v New York Supreme Court, Appellate Division, Second Department.

KATIE J. MACMAHON, Administratrix, etc., of John Joseph MacMahon, Deceased, Plaintiff, Respondent,
against
THE BROOKLYN AND NEW YORK FERRY COMPANY, Defendant, Appellant.

Case on Appeal.

James & Thomas H. Troy, attorneys for defendant, appellant, 16 Court street, Brooklyn, N. Y.

Charles J. Patterson, attorney for plaintiff, respondent, 26 Court street, Brooklyn, N. Y.

w *Statement Required by Rule* 41.

The summons and complaint were served August 17th, 1895.

The answer was served August 24th, 1895.

The names of the original parties are: Katie J. MacMahon, administratrix of the goods, chattels and credits of John Joseph MacMahon, deceased, plaintiff, and The Brooklyn and New York Ferry Company, defendant.

There has been no change of parties during the pendency of the action.

There has been no change of attorneys during the pendency of the action.

1 Supreme Court, Kings County—Place of Trial.

KATIE J. MACMAHON, Administratrix of the Goods, Chattels, and Credits of John Joseph MacMahon, Deceased, Plaintiff,
against
THE BROOKLYN AND NEW YORK FERRY COMPANY, Defendant.
} Summons.

To the above-named defendant:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer on the plaintiff's attorney within twenty days after the service of this summons, exclusive of the day of service, and in case of your failure to appear, or answer, judgment will be taken against you by default, for the relief demanded in the complaint.

Dated August 14, 1895.

CHARLES J. PATTERSON,
Plaintiff's Attorney.

Office and post-office address, No. 26 Court street, Brooklyn, N. Y.

2 Supreme Court, County of Kings.

KATIE J. MACMAHON, as Administratrix of the Goods, Chattels, and Credits of John Joseph MacMahon, Deceased,
against
THE BROOKLYN AND NEW YORK FERRY COMPANY.

The plaintiff complains of the defendant and alleges:

I. That heretofore and on the 21st day of July, 1895, John Joseph MacMahon died intestate and that by an order or determination of the surrogate's court of Kings county made the 13th day of August, 1895, the plaintiff was duly appointed the administratrix of the goods, chattels and credits of said deceased and she is still acting as such administratrix.

II. Upon information and belief that the defendant is, and at the time hereinafter mentioned was a domestic corporation duly organized and existing under the laws of the State of New York, and on the 21st day of July maintained, operated and controlled a certain ferry across the East river, New York, by means of steamboats from the foot of Twenty-third street, New York city, to the foot of Broadway, Brooklyn.

III. Upon information and belief that on the 21st day of
3 July, 1895, the said deceased John Joseph MacMahon was lawfully upon the East river in a steam-launch, passing along the said river at or near the foot of South Sixth street, Brooklyn.

IV. Upon information and belief that at the same time one of the ferry-boats belonging to the defendant and in charge of its agents and servants was also upon the East river near the launch in which the deceased lawfully was.

V. Upon information and belief that the defendant and its agents and servants were negligent and careless in the management and control of the said boat, and in consequence thereof the same was caused to and did run into and collide with the launch in which said deceased was, thereby knocking him and causing him to fall into the water whereby he was drowned.

VI. Upon information and belief that the said deceased was not negligent or careless in any respect and that the injury aforesaid was occasioned solely through and by the negligence and carelessness of the defendant and its agents and servants.

VII. That said deceased left him surviving as his only next of kin this plaintiff, his widow, and two children, namely, Oliver Robert, aged ten years, and John Lester, aged eight years, who were damaged by reason of his death in the sum of fifty thousand dollars.

Wherefore plaintiff demands judgment against said defendant for the said sum of fifty thousand dollars ($50,000) with interest from July 21st, 1895, together with the costs of this action.

CHARLES PATTERSON,
Attorney for Plaintiff.

4 CITY OF BROOKLYN, } ss:
County of Kings, }

Katie MacMahon, as administratrix of the goods, chattels and credits of John Joseph MacMahon, deceased, being duly sworn deposes and says, that she is the plaintiff in the above-entitled action, that she has heard read the foregoing complaint and knows the contents thereof, and that the same is true of her own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters she believes it to be true.

KATIE J. MACMAHON.

Sworn to before me this 14th day of August, 1895.
JAMES C. CROPSEY,
Comm'r of Deeds, City of Brooklyn.

Supreme Court, County of Kings.

KATIE J. MACMAHON, as Administratrix of the Goods, Chattels, and Credits of John Joseph MacMahon, deceased,
against
THE BROOKLYN AND NEW YORK FERRY COMPANY.

The above-named defendant, The Brooklyn and New York Ferry Company, for answer to the complaint in this action.

5 First. The defendant denies any knowledge or information sufficient to form a belief of the allegations contained in the first paragraph of said complaint or of any or either of said allegations.

Second. The defendant admits that it was and is a domestic cor-

poration duly organized and existing under the laws of the State of New York, and maintained, operated and controlled a ferry across the East river by means of steamboats from the foot of Twenty-third street, in New York city, to the foot of Broadway, in the city of Brooklyn, and still so operates and maintains the same.

Third. The defendant on information and belief denies each and every other allegation in the said complaint contained.

Fourth. And further answering said complaint this defendant on information and belief avers that on the said 21st day of July, 1895, the said John Joseph MacMahon was drowned in the said East river, and that said drowning was caused and occasioned solely by reason of his own carelessness and negligence and not otherwise.

Wherefore defendant demands judgment against the plaintiff that said complaint be dismissed with costs.

JAMES AND THOMAS H. TROY,
Attorneys for Defendant, Phenix Building,
16 *Court Street, Brooklyn, N. Y.*

CITY OF BROOKLYN, }
County of Kings, } *ss.:*

John G. Jenkins, being duly sworn, says that he is the treasurer and an officer of The Brooklyn and New York Ferry Company, the corporation defendant in the above-entitled action, that the
6 foregoing answer is true, of his own knowledge, except as to the matters therein stated to be alleged upon information and belief and as to those matters he believes it to be true. That the reason why this verification is not made by the defendant is because the defendant is a corporation and the grounds of deponent's belief as to all matters in said answer not stated upon his knowledge are investigations which deponent has caused to be made concerning the subject-matter of this action and information acquired by deponent in the course of his business duties as treasurer of the corporation defendant in this action.

J. G. JENKINS.

Sworn to before me this 23d day of August, 1895.

FRANK JENKINS,
[SEAL.] *Notary Public, Kings County, N. Y.*

At a trial term of the supreme court of the State of New York, held in and for Kings county, at the court-house in the city of Brooklyn, on the 15th day of April, 1896.

Present: Hon. William D. Dickey, justice.

KATIE J. MACMAHON, etc., Plaintiff,
against
THE BROOKLYN AND NEW YORK FERRY COMPANY, Defendant. } Part 2.

This cause having been called for trial in its order on the
7 calendar, and twelve trial jurors were duly drawn, empaneled and sworn to try the same. The jury come into court

and say that they find a verdict for the plaintiff and assess the damages at twenty-one thousand dollars—five per cent. allowance.

Motion for a new trial made and denied. Forty days' stay after notice of entry of judgment.

Extract from the minutes.

HENRY C. SAFFEN, *Clerk.*

Supreme Court, Kings County.

KATIE J. MACMAHON, as Administratrix of the Goods, Chattels, and Credits of John Joseph MacMahon, Deceased,
against
THE BROOKLYN AND NEW YORK FERRY COMPANY.

Judgment, April 18th, 1896.

The issues joined in this action being reached for trial on the calendar of this court, and same having been duly tried at a trial term thereof, held at the court-house in the city of Brooklyn, on the 9th, 10th, 13th and 14th days of April, 1896, before the Hon. William D. Dickey, one of the judges of said court and a jury, and the jury having found a verdict in favor of the plaintiff for the sum of twenty-one thousand dollars damages,

Now, on motion of Charles J. Patterson, attorney for the plaintiff,

It is adjudged that the plaintiff, Katie J. MacMahon, as ad-
8 ministratrix of the goods, chattels and credits of John Joseph MacMahon, deceased, do recover of the defendant The Brooklyn and New York Ferry Company, the said sum of twenty-one thousand dollars as found by the jury as aforesaid, with nine hundred and thirty-four and $\frac{50}{100}$ dollars interest on said verdict from July 21st, 1895, together with the further sum of twelve hundred and thirty-eight and $\frac{15}{100}$ dollars, the costs and disbursements of the action, amounting in all to the sum of twenty-three thousand one hundred and seventy-two and $\frac{65}{100}$ dollars ($23,172.65).

A copy.

HENRY C. SAFFEN, *Clerk.*

At a trial term of the supreme court, held in and for the county of Kings, at the county court-house in the city of Brooklyn, on the 15th day of April, 1896.

Present: Hon. William D. Dickey, justice.

KATIE J. MACMAHON, Administratrix of the Goods, Chattels, and Credits which were of John Joseph MacMahon,
against
THE BROOKLYN AND NEW YORK FERRY COMPANY.

A motion having been made on the rendition of the verdict herein
9 on the part of the defendant on the minutes of the justice presiding on the trial of this action to set aside the verdict this day rendered thereon, and for a new trial on the exceptions taken on the trial and on the ground that said verdict is excess-

ive and contrary to the evidence and contrary to law, and after hearing James and Thomas H. Troy for defendant, in support of the motion, and Charles J. Patterson for plaintiff, in opposition.

Ordered that said motion be and the same is hereby denied. (Enter.)

WILLIAM D. DICKEY, *J. S. C.*

A copy.

HENRY C. SAFFEN, *Clerk.* [L. S.]

Supreme Court, County of Kings.

KATIE J. MACMAHON, as Administratrix of the Goods, Chattels, and Credits of John Joseph MacMahon, Deceased,
against
THE BROOKLYN AND NEW YORK FERRY COMPANY.

To Henry C. Saffen, Esq., county clerk of Kings county; Charles J. Patterson, Esq., attorney for plaintiff.

SIRS: Please take notice that the Brooklyn and New York
10 Ferry Company hereby appeals to the appellate division of the supreme court in the second judicial department from the judgment for twenty-three thousand one hundred and seventy-two and $\frac{65}{100}$ dollars ($23,172.65) entered in the above-entitled action in the office of the clerk of the county of Kings on 18th day of April, 1896, in favor of Katie J. MacMahon, as administratrix of the goods, chattels and credits of John Joseph MacMahon, deceased, and against the said The Brooklyn and New York Ferry Company, and also appeals to said appellate division of the supreme court from the order entered in this action at a trial term of the supreme court held in and for the county of Kings on the 15th day of April, 1896, denying a motion for a new trial on the minutes of the justice presiding on the trial of this action and from each and every part of said judgment and order.

Dated April 28, 1896.

Yours, etc., JAMES AND THOMAS H. TROY,
Attorneys for Defendant, No. 16 Court Street, Brooklyn, N. Y.

Case.

N. Y. Supreme Court, Kings County.

KATIE J. MACMAHON, Administratrix, etc.,
against
THE BROOKLYN AND NEW YORK FERRY COMPANY.

The issues in this case came on to be tried before Hon.
11 William D. Dickey and a jury, at a trial term of the supreme court, held at the city of Brooklyn, on the 9th day of April, 1896.

Charles J. Patterson, Esq., appeared for the plaintiff.

Messrs. James and Thomas H. Troy, appeared for the defendant.

Mr. Patterson opens the case to the jury for the plaintiff and offers in evidence a section of the coast survey.

(Marked Exhibit I.)

MANUEL GONZALES, being called as a witness on behalf of the plaintiff and duly sworn, testified as follows:

Direct examination by Mr. PATTERSON:

I live at No. 664 One hundred and forty-fourth street; I am a cigar manufacturerf; in business for myself; I recollect being a passenger on the ferry-boat which left Twenty-third street, New York, on the 21st day of July, 1895; I observed an accident to a launch in the evening about half past seven; I had taken the boat at Twenty-third street; I occupied the left side of the boat going into the slip facing forward as the boat was going; I was on the left-hand side; I was on the front of the boat outside of the cabin; I saw the launch before the collision happened; I guess the ferry-boat was about 150 feet away from the launch when I first noticed it; they were whistling at the time on the little boat; my attention was called by the whistling on the launch; the whistle was pretty loud; loud enough to hear it about 300 feet away; I saw three men in the boat; I don't remember the color of the launch, I did not notice the color; I did not notice whether or not it had any awning on it; no, I did not see that; when the launch was whistling and about
12 150 feet away from the ferry-boat, the ferry-boat was going straight down at the time; going straight to the slip; to the ferry slip; to the Twenty-third Street ferry; the launch at this time was near the ferry slip; after I heard the launch whistling in that way and saw the launch I did not notice whether the ferry-boat slackened the speed or what they did; I don't know of their doing anything; the ferry-boat kept going ahead; on the launch I heard them halloaing: "Why don't you stop the boat," after whistling for a good while; then the boat struck the launch; the ferry-boat struck the launch right in the middle, the launch was close, that way (indicating); she struck it right in the middle, more near to the rear; I saw what happened to the men on the launch when the ferry-boat struck it; I saw one going down in the water, and the other two I saw hanging on the boat; the one that was the steerer of the launch went into the water, to the stern; when the boat struck the launch he fell right down that way; I don't know no more than I saw him go right down that way; fell down in the water; the three were standing up at the time the launch was struck; when the ferry-boat was 150 feet away from the launch I could see who was in the launch; I could see three men in the launch very plain; after the launch was struck and one man fell out in the water, the man at the rear, and the other two got on the ferry-boat; they tried to stop the steam from the launch, they got a sort of big stick and tried to stop the steam from the launch; the steam was escaping from the launch; they were trying to stop it; I don't know what happened to the steam on the launch after the collision after that I didn't see no more after that; the launch went

under the ferry-boat; I saw the launch after it went under the ferry-boat; I saw it under the ferry-boat; the ferry-boat
13 continued right into the slip; it did not stop at all till it got to the dock; I didn't know the plaintiff here before this accident; I have never seen her since; I don't know either of the parties.

Cross-examination:

My place of business is One hundred and third street; I was going to Brooklyn that evening to see a customer; I could not say what time that boat left the New York side; I did not look at any clock or watch to find out what the time was then, I guess it was a little after seven o'clock when I went on the ferry-boat, ten minutes after seven o'clock, I think so, I ain't sure of that; it was the daylight; I am positive of that, yes.

Q. Were there any lights lit on the ferry-boat?

A. I did not notice all that; I see some vessels while I was coming down on the ferry-boat; I don't remember whether I saw any lights on any of those boats, I didn't took no notice of anything like that; I was standing outside; I would not say that I looked to see if any of the docks on either side were lit up, any piers or docks lit up, as I travelled along, because I don't remember; I could not say whether the Twenty-third Street ferry slip on the New York side was lit up before I got on the boat; I could not tell whether the slip on the Brooklyn side was lit up or not when I got there; I was on the front of this boat; as the boat approached the Brooklyn shore my attention was called to the little launch; I did not take notice of the shore as I passed along; I do not know where the Glen Island dock is; I didn't take no notice whether there was a single light on the river; I think this accident occurred about half past seven; I was on the left side of the boat, going in the slip; I saw this
14 launch as I described her about 150 feet ahead of the ferry-boat; my attention was called by the whistling; my attention was called after I heard the whistle once, the first time, I heard it three or four or five times after that; I looked as soon as I heard the first time I think.

By the COURT:

The launch was whistling; the ferry-boat did not do any whistling.

By DEFENDANT'S COUNSEL:

At that time I saw three men in the boat; I think the launch was standing still, I could not say for sure; there were three men in the boat; I was able to distinguish when I looked first that there were three men in the boat; they were standing up, all three of them, one here, one there and one there, straight up; as I looked the little boat was pointing crossways in front of the ferry, pointing down towards Governor's island; the men were standing up, in the middle of the boat, three in a row; three men, one in the middle, one at each end, all standing up; when I looked and saw the men

in this position the ferry-boat kept on; I did — hear any bell rung on board the ferry-boat; I cannot tell that the bell was rung and the wheels of the ferry-boat stopped, if it is so I did not see or hear anything; I don't think the ferry-boat reversed the wheels and turned the boat the other way as if to go out again; well, I don't think it did.

By the COURT:

I did not take any notice of that.

By DEFENDANT'S COUNSEL:

I give an opinion about the launch because I am positive what I saw about the little launch; I guess the ferry-boat got about seventy-five feet from the launch before I heard the men in the boat
15 cry out, "Why don't you stop;" that would be about half the distance from where I saw her first, the men were still standing up in the boat, the ferry-boat still kept on; the ferry-boat went as fast as she had been going before when the men cried out to stop, as fast as when I saw the launch first, and the men were still standing up; nothing that I know occurred between the time the men cried "Why don't you stop" and the time the ferry-boat struck the launch, nothing occurred but the ferry-boat going right on toward the launch, the launch continued in the same position and the men also; I did not see the men do anything, they were standing up, not doing anything that I know of, only hollering, I could not say if there was one or two hollering; I was able to see very plain the little launch; I could not tell whether there was any light burning in the launch; the launch when the ferry-boat struck her was in the mouth of the dock, right up to the end of the pier; I don't know how close to the mouth, I think about as far as from here to that door there.

(It is agreed that the distance indicated by the witness is about thirty feet.)

The ferry-boat struck the launch right in the middle; I guess at that time the launch was pushed with the ferry-boat, drifted in under the ferry-boat; the men were not still standing; two was up on the ferry-boat already.

Q. When the two men left the launch and got onto the ferry-boat, how close had the ferry-boat got up to the small boat before they got upon the ferry-boat?

A. As soon as she struck the launch they were just about five or ten feet from the mouth of the ferry; the small boat was pretty near at the entrance of the ferry when the men got on board; they got in as soon as they struck; I am quite sure the men did not get on the boat before they struck; when the ferry-boat struck
16 the small boat I did not feel any collision on board the ferry-boat; I did not feel the boats coming together; I could not say how fast the ferry-boat was going at that time; I know they were going at their regular speed that they go at any other time going into the ferry; she had not slackened speed at all, not that I

noticed; I could not say what part of the ferry-boat struck the small boat right in the middle; the little launch was under the boat already; I could not see anything from the ferry-boat; the little boat did not go under the ferry-boat till it struck her, then she drifted to one side under the ferry-boat on the other side from the side I was on. I did see something else take place; I saw that one man went over like this; he went over that way; I saw him going that way; when the ferry-boat struck the launch I suppose it turned this way.

By Mr. PATTERSON:

They must upset.

By DEFENDANT'S COUNSEL:

When the ferry-boat struck the little boat it drove the little boat over so that she took in water on that side, capsized; that is what I think she done; when the ferry-boat struck the small boat I think she turned her over so that she took water in on the side she was struck, because the men were standing on the other side, and I suppose the launch must have been—I see a man pulling up this gentleman there; I see one man get hold that way; I thought all three went under, I could not see because they got the whole of the boat under; I saw a man going overboard; he went overboard as I have described before the two men got on the ferry-boat, before they got on the ferry-boat, I am quite sure about that; he
17 went overboard on one side of the boat, the side nearest to the ferry-boat; when the ferry-boat struck the small boat the side nearest the ferry-boat was under the side of the ferry-boat; I saw it plain enough, I saw three men standing in the boat when I looked first, they continued to stand and did nothing but shout till the accident happened; the first person I told this story to after that was parties I went to see in Brooklyn.

By the COURT:

I told this story as to the accident to a man that has a place on the corner of Reid avenue and Madison street.

By DEFENDANT'S COUNSEL:

His name is Henry Opp; his business is a liquor store; I had not been drinking any that day, I am not a drinking man; I did not talk with anybody else that day, only at my house when I got home; I know this gentleman here, Mr. Cooper, I have talked with him about it; I have talked with him about it twice I guess at my house, he came there; I did not know he was connected with Mr. Patterson's office when he called on me, he told me where he came from, I had never seen him before; he called on me twice. I read newspapers, I ain't got no particular paper to read; I did not read them about this time; I did not notice an account of this accident and that there was a coroner's inquest in the newspapers, I never heard anything about that; I have never talked with anybody else but Mr. Cooper about it; I saw Mr. Cooper about four or five months

ago, and the other day when he subpœnaed me; this took place in July last, nearly a year ago, and I saw Mr. Cooper for the first time four or five months ago, I ain't sure, four or five months;
18 during that four or five months between July and the time I saw Mr. Cooper I had not talked with anybody about this except in my house; I spoke about it in my house I guess on the following day, we did talk about it again four or five months after this occurred; I talked with the lady who lived next door to me about it; she asked me; she was a neighbor of mine, that is all I know; her name is Smith, she is not here; I did not talk of this occurrence except upon the times I have now stated to the jury, first when I went home that night and afterwards four or five months after to this lady and then to Mr. Cooper; I went back to New York that night, about half past eleven I guess I got home; when the ferry-boat got in the dock that night I stayed there not longer than five minutes at most; I did not stay in the ferry slip, I stood outside speaking to two parties who were speaking about—I went outside.

Q. While you were going through could you tell whether there were any lights lit in the ferry slip; could you tell if there was a large electric light lit out on the end of the pier?

A. There might have been, I did not take any notice of that.

Redirect by Mr. PATTERSON:

When the ferry-boat struck the little boat it was standing across this way, rocking when they struck; it was not while she rocked thus that the men went out in the water; when the boat struck the men went into the water; when the ferry-boat struck it then the launch rocked and the man fell out into the water; I don't know whether this Mrs. Smith I spoke to about it was a friend of Mrs. MacMahon.

Recross by DEF'T'S COUNSEL:

I don't know how long the conversation between me and
19 Mrs. Smith on this subject was, whether it was two minutes or five minutes or ten minutes; that conversation was about two or three minutes.

CHARLES L. MCCANN, being called as a witness on behalf of the plaintiff and duly sworn, testified as follows:

Direct examination by Mr. PATTERSON:

I live at present at No. 35 Norfolk street, Dorchester, Mass., an outskirt of Boston; on the 21st of July, 1895, I lived at No. 105 South Fourth street; I am an undertaker's assistant, I was that on the 21st July, 1895; I knew Joseph MacMahon in his lifetime, I knew him a little while; my father is a doctor in Williamsburgh, I was living with him at the time this accident happened; I had known Mr. MacMahon before the accident happened about one week; I was out with him in a steam-launch on the evening of July 21st, 1895; the boat was lying when we got aboard of it at Wallabout basin, we got aboard about six o'clock; Mr. MacMahon and

Mr. Williamson went aboard with me; the size of that boat was twenty-six feet I believe; I do not know the size of it.

(It is agreed that it was twenty-two feet long by five feet three inches); it was a side wheel; it had an awning over the stern half up to the boiler; the boat was painted white all over and the water line was kind of dark; just where the water came it was dark, slate color; the awning was white canvas, painted with white paint; the surface, the deck of the boat stood above the level of the water as we three were in it, a couple of feet out of water with the combing and deck; there was a smokestack on the boiler, it was above the surface of the deck a couple of feet higher than when I stood up; a couple of feet higher above my head when I stood up in
20 the bottom of the boat; Mr. Williamson managed the engines on board; Mr. MacMahon took position in the stern steering. I was in the bow; we left at twenty-five minutes of six; we went up the river towards Blackwell's island then we went down a little way and tied up; did not tie up at the South Second Street dock; there is no tide, they did not tie up.

By the COURT:

This was a pleasure trip.

By Mr. PATTERSON:

Next we went out and started to go back to the Wallabout again; we crawled up the river towards Blackwell's island and down towards Governor's island; our first direction had been up the river; when we started to come back our direction was down; the tide when we went back was up the river; we were going against the tide; when the collision occurred it was about twenty minutes of eight; at the time I saw the ferry-boat our boat was right off about half a block or so off the docks, going along the river; out stream, out towards the centre of the stream; about fifty or seventy-five feet out from the piers; the ferry-boat, at the time I first observed it, was kind of making a sweep on the New York side; a sweep turning around towards Brooklyn; she had been going the same way that we was only she was ahead; she turned around to the left; after turning to the left, or port side, she looked as if she was coming right in the dock somewhere in Brooklyn, pointed towards Brooklyn.

By the COURT:

It was a pretty long turn.

By Mr. PATTERSON:

What I call a sweep; after she made the turn she looked as if she was going to enter the slips there, but she gradually kept drifting this way.

21 By the COURT:

As it started across stream it headed for one of the five slips.

By Mr. PATTERSON:

There are five slips there; the tide seemed to have an influence on the ferry-boat.

Objected to.

After she had made that turn and was pointed in the way I have described she seemed to be going like most ferry-boats go.

By the COURT:

She was going right in these slips.

By Mr. PATTERSON:

The boat was straight but she was drifting; drifting up; I blew the whistle on our boat several times; at the time I first blew the whistle the ferry-boat was about a block off from our boat; a block in my judgment is a couple of hundred feet; at the time I blew the whistle when she was 200 feet away the boat was pointed in shore; right to our centre.

Q. Towards the centre of the launch?

A. We were this way and she was pointed this way; yes, sir.

Q. Was she pointed directly to the point where you were or to the right or left of it?

A. She was pointed downstream to us; pointed at a point downstream past our bow; I could not say how much past our bow would be the point to which the ferry-boat was pointed when she was 200 feet away and I blew the whistle, it was on an angle; I could not tell whether the boat was pointed either to the south or downstream at the time I blew the whistle when she was 200 feet away; at the time I blew the whistle our launch was just
22 moving; I did not see them do anything on the ferry-boat when I blew the whistle; at this time when I blew the whistle and the ferry-boat was 200 feet away we were most up to the first slip.

By the COURT:

I blew one whistle and then was ordered to give two, that is what I did, one and then two together, making three altogether.

By Mr. PATTERSON:

Afterward I blew it like a danger signal, all the time kept blowing; a few seconds after blowing one and two together I blew what I call danger signals; at the time we were struck we were a little way off the pier, off the dock; the ferry-slip pier; there are two of those piers, one coming out on each side of the slip, we were off of the upstream one; that is when we were struck; between the time I blew our whistle and the time we were struck we moved forward; I could not say how much we moved forward between the time I blew our whistle and the time we were struck, a few feet; by a few feet I mean two or three feet.

Q. Was your engine stopped before you were struck?

A. Yes, sir; at the time our engine was stopped the ferry-boat was right on top of us almost then; I did not estimate that distance then; after stopping we took the oars and was going to pull us off; I could pull, but hardly had time; I got oars out; I pulled about two strokes on the oars before I stopped pulling on them.

By the COURT:

I got the oars from their places in the bow; I put them in their place in the row-locks.

By Mr. PATTERSON:

I pulled two strokes and then stopped; I let go of them;
23 they went out of my hand into the river; after letting them go I jumped on the bow of the boat, and was going to jump overboard, and I seen the paddle-wheel turning and it scared me; I jumped for the ferry-boat as soon as it was near enough; when I jumped on the ferry-boat I seen somebody else's hand come over the ferry-boat; some man grabbed him and pulled him up, and that was Mr. Williamson; there was steam and everything escaping, and Mr. MacMahon was not to be seen; the ferry-boat went right on into the slip, and it pushed us for some distance; pushed us away.

By the COURT:

It was moving as I got on.

By Mr. PATTERSON:

It stopped after it hit us a little while and then went into the slip; after striking our boat it went just a few feet ahead, kept pushing us ahead; the smokestack was knocked off the little boat and the machinery bent; a good big cut right in the bow of it where it hit; the part of our boat struck by the ferry-boat first was, I guess, the bow where I was; I did not see what became of Mr. MacMahon; at the time this accident happened I seen no light; it was between daylight and night.

Q. How far did you see objects there on the river at that time?

A. I could see the boat on the New York shore.

Objected to.

I could see a boat on the New York shore; I saw the New York shore by daylight just before the accident happened; I could not say how fast the little launch had been travelling; I do not know how many miles an hour it traveled; Mr. Williamson did not do anything to our engine before the collision occurred; Mr.
24 Williamson told me to get hold of the oars and pull; at that time the boat was stopped, very nearly stopped; it was after Mr. Williamson said that to me that I got the oars out; I noticed that Mr. Williamson was just starting at this time, that is all; from the time I whistled when the ferry-boat was 200 feet away till she struck us I did not notice any slackening of her motion; the paddles were going when she struck us; I do not know which way.

Cross-examination by def't's counsel:

My business is an undertaker; my father is a physician; about the time of this accident I lived at No. 105 South Fourth street; I had lived there the last five years; that is two blocks and a half from the ferry; I had frequently travelled on these ferries to New York and back; I am familiar with the ferries and familiar with the place; I think there are six ferry slips there right alongside of each other; the space that would occupy on the river from the extreme end of the sixth ferry to the first, or the first to the sixth would be a good block.

By the COURT:

Each one is almost as wide as this court-room.

By DEF'T'S COUNSEL:

Q. From the beginning of the first slip, call it No. 1, to the end of the sixth slip, what space would that occupy on the river?

A. Just about a block from Broadway to South Ninth street, almost.

Q. You said a block was 200 feet?

A. Yes, sir.

Q. Do you mean to say that the six slips there, Twenty-third street, Roosevelt street, and the other ferries only occupy 200 feet?

A. Two hundred feet or a little over, maybe.

Q. About how often do the ferry-boats go in and out of those slips during that time of day and evening from your knowledge and experience of the place?

25 A. On week days they go out every minute at some of them.

Q. And on Sundays at the time you speak of in the evening, how frequently do they go in and out of those slips?

A. Not so much.

Q. About how much?

A. Every three minutes.

By the COURT:

This was Sunday.

By DEF'T'S COUNSEL:

One would not go out of every slip every three minutes, but out of some slip one would go every three minutes, and into some slip or another one would come every three minutes; I knew that at that time; I knew that the boats from the Twenty-third Street ferry on leaving the Brooklyn side went up the river; I knew that the boats from the foot of Twenty-third street, New York, to come to Brooklyn came down the river; I had observed their course frequently and knew just how they came; I knew that the boat from Twenty-third street came down to about mid-stream and when opposite the slip, according to the tide, turned in toward Brooklyn; if the tide was running up she would go a little past the slip depend-

ing on her headway, and then letting the drift carry her into the slip; if the tide was running up from Governor's island she would pass the dock, then take a sheer and let the drift carry her in, and in the same way but in the other direction when she was going up; I knew Mr. Williamson about one month before that evening; I met him at the Wallabout; I had a boat myself there and got acquainted with him; I met him frequently in the interim during that month I seen him there; I had not had any particular acquaintance with him; I had been out with him twice before.

26 Q. He was supposed to own this small launch, was he not?

A. I knew nothing about him; he furnished this small boat on that occasion, some parts of it were open; the bow was open; some parts of it were decked where you could walk, quite enough to walk on the sides, on each side of the engine and boiler; a space on each side of the engine and boiler, about that wide, two feet on each side, cockpit; it was decked on the side that way, and in the stern and bow, decked all around, regular cockpit like that, in shape like a cigar; the cockpit was in the stern and the engine is right in the middle of the cockpit; this boat had seats in it, decked so you could walk on it, on each side of the engine and boiler, and decked in front; it was decked in front about three feet; I only seen canvas over it; I don't know whether decked with grating or solid; I knew there was white on it, because I had walked on it; there was a water tank on that deck in front that extended back three feet from the stem; from there to the commencement of the engine it was about six feet; that was open; the engine and boiler occupied three or four feet from that point to the rear; to the stern on each side of it was this foot of decking I speak of with the combing on; at the after part of the engine and boiler was open again, seats around the stern; this boat steered with a tiller; I know what you mean; I guess the boat was about three feet deep from the floor—the bottom timbers of that boat to the top of the gunwhale; when I stood up the smokestack was somewhat higher than I; about two feet above my head when I stood on the bottom boards; I do not know anything about the build of this boat; I know she was a round-bottom boat; I never seen any center-board; she was pretty sharp forward and aft, too; I don't know

27 whether she was a cranky boat or not, or easily rocked or not; I cannot tell about that; I have stood upon the small deck we are speaking of on either side of the boiler or engine; that did not seem to have any effect at all as to bringing her down on that side; I had been acquainted with Mr. MacMahon one week; that Sunday evening we called at his house; Mr. Williamson and I called at Mr. MacMahon's house for him in the afternoon; Mr. Williamson and I contemplated going out in the boat that time when we called upon Mr. MacMahon.

By the COURT:

We stopped at his house to get him to go along with us to the Wallabout.

By DEFENDANT'S COUNSEL:

When we got to the place where the boat was she was tied up to a raft; there was no steam up at that time; Mr. Williamson got the steam up; it took about twenty-five minutes to get the steam up after we got there, then we started off; Mr. MacMahon was steering the boat and I did not hear him say where we intended to go, not anything was said between us as to where we were going; not anything said about going up as far as Blackwell's island only he said up the river; I was sworn and testified before the coroner; I said we were going towards Blackwell's island; no, sir, I don't think I said that we started for Blackwell's island but did not go there because it was getting so dark, I am not sure of that; I had had a little experience in sail-boats before this time, not with steam-launches or steamboats, I had often rowed in fishing; after we started Mr. Williamson had acted as engineer on the boat and took care of the engine, Mr. MacMahon steered the boat, I just sat in the bow; I did not have anything to do with the navigation of the boat at all, it was left to Mr. MacMahon and Mr. Williamson; I did not know anything about the engine or its operation, I had no knowledge on that subject; when we started out we were in the positions I have described, I forward, Mr. MacMahon after and steering and Mr. Williamson attending to the engine amidship, we continued in those positions seated that way the whole time during the whole trip till we got up to Second street. The tide at that time as we went up was with us; the tide was running in; the tide was with us as we went up it was a strong tide, not as strong a tide as when we were coming back, we passed the mouth of these ferry slips going up, when going up we passed them quite a distance out 100 feet I guess, I only think we were 100 feet out; I don't know; I know the flood tide runs stronger on this side of the river than on the other, it runs stronger there, I think it does; we started from the Wallabout about six o'clock; before we went on this boat we each had a glass of beer to drink, me, Mr. Williamson and Mr. MacMahon. we had them in the boat-house—no we had it on the corner, Kent Avenue corner; I don't know the name of the place; we did not have more at the boat-house; we only drank once that afternoon; from the time we started till we got up to Second street we were sailing about half an hour, I guess; I don't know why we didn't keep right on instead of going in that slip; I was not running the boat; I did not hear anything said by anybody about experimenting, taking the boat out for an experiment; I heard there was some kind of patent, but never heard nothing that day; there was not any talk on board of the boat, or between us three, or any of us three, at any time, with regard to experimenting on that occasion by taking out that boat; I had not heard anything said of that, said by either of the other two persons; all they said was that it was working good; I don't know what they meant; I heard them saying that—either one of them said that—I don't know which one, he said it to the other person; I guess

the two were talking; I knew they were talking about the boat, but don't know which one said it; they were talking about the boat; they said it was working good; they didn't say the boat; they did not say the engine; I don't know why they went in there; the boat didn't tie up at the dock there; I didn't say before the coroner that she tied up at the dock; she was at that dock or at that place where she was in the slip at Second street from the time we went there till we went back I suppose that was an hour; during that hour we were sitting there watching the boats going by; the bow of the boat was both in shore and out, towards the river; sometimes in and sometimes out; she was swinging; we were looking out on the river at boats all the while; I saw boats pass; I saw the Defender pass, and we whistled at her; I saw ferry-boats go up and down the river; they went up and down as usual; they were not lit up; it was not dark yet; did not see any ferry-boats lit at the time we were in the dock; I am sure about that; it was daylight; they were not lit up; I saw ferry-boats; I could not say whether they were Twenty-third Street boats.

Q. What was said, if anything, about coming back, instead of going higher up the river?

A. I did not hear anything said about going up any further.

Q. Now, when they left that place the boat was going down the stream, before she got out of the slip that you were going back to from which you came from?

A. Certainly, we intended to return.

Q. Who said that?

A. I know we did, because we all wanted to go home for supper.

Q. Who said anything about that?

A. Mr. MacMahon.

30 Q. What did he say?

A. He did not say, but I know it was all our intentions to get home.

Q. You said that Mr. MacMahon said something about that; do you mean to say that or not?

A. He was running the boat; that is what I mean; I did not mean to say that he said anything about it, but I know very well that we were all coming back; I said Mr. MacMahon said something about it; I mean to say that I made a mistake when I said that; I suppose I did; yes, I suppose I made a mistake.

Q. Have you made a mistake about anything else in your testimony?

A. I suppose about the time, maybe, or something.

Q. How far was it when you got out of that slip and as far as you wanted to go on the river, how far was it from that place to where the collision was down the stream?

A. Four blocks; I always thought a block was 200 feet; that is my judgment about it, that a block is 200 feet; I guess we were twenty or twenty-five minutes getting from the place where we came out of the dock down to the place where the collision occurred; twenty or twenty-five minutes going 800 feet.

By the COURT:

There is a terrible tide; we was not hardly moving.

By DEFENDANT'S COUNSEL:

A terrible tide going against us; while we were going down that twenty minutes I saw boats going up and coming down stream.

Q. How close had you got to this dock on your downtrip when you saw this Twenty-third Street ferry-boat come from the other side, how near to the upper bulkhead, the first bulkhead of the Twenty-third Street slip that one that was nearest to you as
31 you were coming down?

A. We were about fifty feet off; 100 feet; quite a distance off from the dock; I know what you mean by the upper bulkhead of that slip and I know what you mean by the lower bulkhead and the slips between the two; coming downstream we were coming to the upper slip first; we were at about South Fifth street when I saw this Twenty-third Street boat take this turn, just one block; a block, I don't know how long it is, we and our boat were then 100 feet out in the stream; the ferry-boat was then out in the stream way over near New York.

Q. Have you any idea how long it would take a boat from that part of the river she was in having turned towards the Brooklyn side to get to the slip from your observation and travel on these boats?

A. From Grand street to Grand street I guess three minutes.

Q. To the place where this boat took the sweep you speak of?

A. I could not say.

Q. What do you think?

A. I might think three minutes.

Q. That is your judgment now, was it your judgment then?

A. I did not use any judgment then; we were 200 feet above the slip when we saw this boat so far away in the stream that it would take her three minutes to get into the dock, the tide was running against us; I don't know how long it would take us to go that 200 feet; if it took us twenty minutes to go 800 feet, it would take us twenty minutes to go 200 feet, I mean that, about two minutes I mean, about five minutes; I said I did not exercise any judgment about it on that occasion at all; after seeing this boat turning and being then 200 feet away from the slip I did not do any-
32 thing, I was just sitting there; I cannot tell how close down to the slip we were before I blew the whistle; she was quite a distance; I said before the coroner that when I saw the boat turn that I was fearful of danger and blew the whistle then, I said that before the coroner; I blew the whistle when I saw the boat turning, when she was coming for us; I mean we were then 200 feet from the dock, I don't mean the ferry-boat; we were 200 feet from the dock, 200 feet this side of it, going up; we was below the slip when the boat was turning, we had not passed it; when we were about 200 feet above the slip that is when we seen the boat coming for us; I saw this boat when we were about 200 feet above the slip

turning and coming for us, we seen it coming then, but we seen it before in New York; we saw it before; just going along the river at the time she turned and I told you it would take her three minutes to go from there into the slip; I said that when she turned first we were 200 feet below the upper dock; we had not passed some of the docks; I mean we were this way, away from it, towards South Fifth street, we was, that is above, up; 200 feet above; I blew the whistle then I blew it at being told to; that is the time I was told to blow the whistle: I continued blowing the whistle after that; I blew it fourteen or fifteen times afterwards; I don't know how far our boat had travelled against the tide during that time I was blowing the whistle she went ahead a little, only a little I kept on blowing the whistle all the time because I wanted to attract the ferry-boat's attention. I thought there was danger and then we were 200 feet above the dock; I called the attention of the other two on the boat to that fact, once I did, I said to Mr. MacMahon,
"There is a ferry-boat," he said "That is all right;" nobody
33 told me to keep on blowing the whistle, after I blew it three
times I blew it afterwards of my own accord; Mr. Williamson told me to blow it first, he said "Blow three whistles" he did not say for why, he told me why afterwards.

Q. Why?

Objected to. Objection sustained.

I did not speak to him before he told me to blow the whistle, I spoke to Mr. MacMahon; I said to Mr. MacMahon, "There is a boat;" he said, "That is all right, she sees us;" nobody then spoke about blowing the whistle; as soon as Mr. Williamson told me I blew the whistle, that was after I directed Mr. MacMahon's attention to the boat, about a second after; Mr. MacMahon heard me when I spoke to him; Mr. Williamson was in the middle of the boat and Mr. MacMahon at the end, all close together; I could not say how far I think our boat traveled during that time; after I stopped blowing the whistle, I grabbed the oars; we had got almost across the end of the pier at that time; we had reached the pier by that time; when I took the oars the ferry-boat was as far from us as about to the wall back there.

(Distance agreed to be forty feet.)

I could not say how far it was between the two, how far the ferry-boat was from us when I took the oars; I don't know; I cannot have any judgment about it; I cannot tell how far the ferry-boat was from us when I stopped whistling, that is when I jumped on deck.

By the COURT:

At the time I took the oars the ferry-boat was close to us, so close that I had to drop them.

By DEFENDANT'S COUNSEL:

The ferry-boat was not lit up at this time.

34 Q. No lights on her?

A. I don't know; I saw the Glen Island dock as I came along.

Q. Was not that lit up?

A. I did not see it, I did not take notice of the light seeing people on it; there was no conversation on our boat as to danger from the ferry-boat, only what I remarked, I guess; nothing more than that; I continued to see the boat from that time till the time I took the oars; from the time I left the oars down till the time the boat came up close to us and I jumped aboard the ferry-boat was a minute I guess, half a minute; our boat was not in motion or moving at the time the ferry-boat came up; when she hit us we were stopped; I do not know what stopped her, I could feel that all motion of the boat had stopped, I knew that the machinery stopped; you asked me if I knew what stopped it, I did not know that it would not work; at the time I reached the point where the machinery stopped the boat was then the same way, straight up and down, off the dock; Mr. Williamson told me to take the oars.

Q. Was not that when he found that the machinery stopped?

A. I don't know.

By the COURT:

Q. Had the machinery stopped at that time?

A. I guess it had, yes, sir.

By DEFENDANT'S COUNSEL:

I did not sit down and pull, I stood up using the oars that way, pushing them from me; the oars were in the row-locks, revolving row-locks; I faced with my back to the bow of the boat; I was trying to force the boat back.

Q. How far would it have been necessary to get her back to get out of the line of the steamboat at that time?

A. I don't know.

35 Q. Have you no judgment about it?

A. About half across the room; if the slip is as wide as this room, if we got about half way over we would have been out of the way.

Q. Did you not say before the coroner that if you could have got the boat back with the oars it was only necessary to go back three or four feet to avoid the steamboat?

A. I said I thought if we got back a little ways we would avoid it, yes.

Q. Didn't you say three or four feet?

A. I don't know; I don't think three or four feet would have cleared us; I say half way across this room, about thirty feet, our boat was only twenty-two feet long; if we had got half way as wide as the pier was we would have got out of the way; I guess the rudder of the ferry-boat hit the launch, they were using that rudder

as the stem, it struck where I was at first, that was right at the bow; if we had gone back fifteen feet we might have cleared her; the ferry-boat's stern was swinging all the time; the launch was not swinging too when the engine stopped, we were straight up and down; while this was going on I did not lay the oars down, I dropped them down and jumped up on the ferry-boat; the ferry-boat was going fast when I got on board; she struck the small boat when she was going fast; I don't know whether this rudder of the ferry-boat then being used as the stem was an iron rudder, I thought it was wood; Mr. MacMahon while all this was going on stayed in the stern of the boat; I don't know whether he had been sitting there all the time, I know he was there in the stern; before the coroner I said he was sitting there; I heard the last witness say that three men were standing up all the time, we could not stand up.

36 By DEFENDANT'S COUNSEL:

These ferry slips I have been speaking of are at the foot of Broadway, Brooklyn; Twenty-third street on the New York side is not exactly opposite it, not directly opposite the foot of Broadway, Brooklyn; the foot of Twenty-third street, New York, is about thirty-two blocks up the river, in my judgment, from the foot of Broadway, Brooklyn—a mile and a half; the boats running on the Twenty-third Street ferry, Brooklyn, run up the river about a mile and a half; the Grand Street ferry, from foot of Broadway, Brooklyn, runs opposite to New York, right straight across; the other ferry there is Roosevelt street: that runs down toward the Battery; there is no boat that runs from the foot of Broadway, Brooklyn, that runs up the river, except the boat at Twenty-third Street ferry; I know that fact, and I knew it then; shortly after leaving the South Second Street dock I saw the ferry-boat on the New York side coming down the river; I knew that there were other boats going down that went farther past Broadway; I knew there were boats from Greenpoint come in on the New York side; I knew the boat was coming somewheres in the slip afterwards; at the time I saw this boat coming down that I say was going to turn in and dock in the slip on the Brooklyn side then I knew it was coming in Brooklyn; I did not know it was the Twenty-third Street boat; the boat was not very far up the river; I did not see the boat as she was coming down the river as she was passing South Second street; she had passed South Second street before I saw her first; she was about Grand street, New York; then I saw her take this sweep; I mean to say that was the first I noticed her; I did not know that she came down the river, except the sweep she was taking; I did not notice; I did not know she was the Twenty-third Street ferry-boat.

37 Q. Didn't you know then and don't you now know that there was no ferry coming from the New York side to turn in at the foot of Broadway except the Twenty-third Street ferry?

A. I did not notice that, no, sir; if I had seen her name I would have known it; I knew and know now a ferry-boat on the New

York side above South Second street that went in at the foot of Broadway, Brooklyn, sometimes Houston Street ferry-boats; they are driven away down the river; sometimes the ferry-boats drift down the river; these boats come in at Grand street on the Brooklyn side; I had no idea that this was a Houston Street boat; I did not know what boat it was; I said before the coroner, "We went up to Harlem with the intention of going as far as Blackwell's island," that is the way we was going towards Blackwell's island; it was not the fact that we went with the intention of going to Blackwell's island; I said before the coroner we were going towards Blackwell's island; I stated before the coroner: "We went up the river towards Harlem with the intention of going as far as Blackwell's island;" I said: "We went as far as South Second street, and Mr. MacMahon proposed going in there as it was getting late;" the boat was not tied up with a rope at the dock in South Second street; I was in the bow, and there was a rope stretched across to some other boat, and we held that; I said yesterday that the boat was not tied; I mean to take that back, I do take that back; I have not read my testimony before the coroner since last night; I have read my testimony before the coroner once since I was before the coroner; at Mr. Patterson's office, Wednesday, I believe; I swore before the coroner "We did not land, but tied our boat to the dock;" I mean by holding the boat that it was tied there; if you call that tied it was that way, yes, sir; by my holding it there; I
38 mean to say that when I swore before the coroner that that boat was tied up to the dock I meant that we were holding it there; my attention has not been called to my testimony since last night; I saw the boat leave the Twenty-third Street ferry dock at the foot of Broadway, Brooklyn; maybe it was a little after we came out of the dock at South Second street that I saw the boat leave the Twenty-third Street dock at the foot of Broadway, but I seen a boat leave; I said before the coroner: "When we were leaving South Second street I see the Twenty-third Street boat leaving the dock;" I know from my own knowledge of the operation of the boats that very soon after the boat would leave the dock at the foot of Broadway another boat would come in; I was looking out for that boat coming in as we were coming downstream, I was in the bow looking; I was not in the bow looking with the idea of seeing when the Twenty-third Street ferry-boat was coming in, that did not occur to me.

I did not swear before the coroner, "The ferry-boats we seen had lights;" I did not; I am sure of that: I said this: "When I saw the boat make the turn or sweep I knew she was coming in Brooklyn;" I said this: "We were about three blocks from the boat when I knew she was coming in Brooklyn;" I said this: "The ferry-boat was about two and a half blocks away from our boat when I blew the whistle;" when I blew the whistle the ferry-boat was heading for Brooklyn towards where our boat was; our boat was under full headway going down the stream; at that particular time we had reached the southern rack of the Twenty-third Street ferry; I know what you mean by rack; the long board that sepa-

rates the dock; we had not got to the northermost rack, that was nearest to us coming down to Twenty-third street, the farthest we got was about the centre of it.

39 Q. When you saw this boat turn when you were two and a half blocks away heading for the dock on the Brooklyn side you were above the rack, how far were you above the rack at that particular time?

Objected to as not so testified.

Q. I mean north of it, I mean up the river. How far were you from that rack going towards it at this time?

A. We were right in the middle of the block, South Sixth street and Broadway, that would be about 100 feet from the rack according to my calculation of a block; at that time when the boat was two and a half blocks away up in that direction, I asked Mr. MacMahon if he saw the boat; I did not think there was any danger, not at the time; I thought it was best to tell him; I just remarked it, I said: "Do you see the boat?" He said, "Yes, it is all right;" I had no object in asking him if he saw the boat.

Q. Didn't you say before the coronor that you were apprehensive of danger at that time?

A. Not when I asked him if he saw the boat, maybe right after I was.

Q. Were you apprehensive at any time at all?

A. Not when I asked him.

Mr. Williamson told me to blow the whistle; he told me to blow the whistle a little while after I asked him if he saw the boat; a few seconds after I was apprehensive of danger then.

Q. How near to the rack were you at that time?

A. Fifty feet further.

Q. So then you were according to your calculations fifty feet above the rack, and apprehensive of danger, then how near had the ferry-boat got while you were traveling fifty feet against the tide; she was coming with it?

A. She was coming across.

40 Q. How near had she got, she was two blocks away when you asked the question?

A. I suppose, perhaps a block.

Q. You understand the question and your answer, don't you?

A. Yes, sir.

Q. Now tell me if you please when your boat first slackened her speed; she was then fifty feet above the rack when did she first slacken her speed?

A. As soon as she got to the rack when the tide hit us; we had not passed the end of the rack; we had just got to the end of the rack, the tide hit us; I mean, the tide was stronger; we did not slacken our speed, the machinery worked the same; the machinery worked the same till we got about the middle of the slip; all this time the ferry-boat was seemingly going at full speed, she seemed to be coming in; when I jumped on the ferry-boat from the small boat the wheels were going; I could not say they were going at

that time forward or backing water; the first time I got an idea that we were in any danger or thought there was anything to be apprehended from the ferry-boat was after I began to blow the whistle three times, then I thought there was danger; then we were about twenty-five feet above the rack perhaps; I blew the whistle three times and after I saw it coming I blew a volley; we were away up the river at the time we saw the boat turn in mid-stream; I said this before the coroner: "Saw the wheels of the ferry-boat going around, it scared me;" I said this before the coroner: "When I was to the bow of our boat I said to Mr. MacMahon when the ferry-boat had turned, 'Do you see the ferry-boat?' he said, 'Yes;' 'Do you think the ferry-boat sees us?' he said, 'Yes;' there was an awning on our boat, it covered the stern; a man could not quite stand up under it; Mr. MacMahon was sitting under that awning in the stern sheets; while our boat
41 was in the Second Street slip we were sitting there nobody doing anything; Mr. Williamson was staying there;" I said before the coroner that he was oiling and cleaning up the engine while we were there; my attention being called to the question of the light and having been asked what I said before the coroner I have no different recollection of it than what I had yesterday; there was a storm that evening; it stormed at nine o'clock I believe; it had not been cloudy and gathering all afternoon; I ain't sure but took notice that it was pretty clear, because a great many boats had went out that day; the row-locks I put the oars in were galvanized-iron row-locks, they went down in the boat in sockets and revolved; I had tried propelling a boat backwards this way before, I had rowed up to New Rochelle several times; I had pulled two oars in a boat in the regular way; I don't remember what was the length of these oars; they were two feet higher than I was, I guess nine-foot oars; the round part of those oars would go through the row-locks, the whole of the round part all the way up; when I let the oars go they fell out, I don't know where they went; when I blew the whistle the first time Mr. Williamson said to me immediately, "Quick, two more;" I said this before the coroner: "Our boat stopped after I got through whistling, then I took the oars" and the ferry-boat was on us immediately; I said this before the coroner, "Our boat went about thirty or forty feet from the time I blew the whistle till the boat stopped;" the first whistle; I said this before the coroner, "When I blew the first whistle I was apprehensive of danger and if the engine had stopped and I had taken my oars, I could have got out of the way of the ferry-boat;" I said before the coroner that I was watching the tide all the time;
42 it was running very strong and I was watching the tide; I said the ferry-boat struck the launch while she was going very fast, pretty fast; I know that if this ferry-boat were to strike a small launch, with the rudder then being used as the stem, that if she struck her while under ordinary headway she would sink the boat, I realize that; it hit in a good, strong place in the bow of the boat and ripped all the awning off the boat; it did go right over it; we went underneath it, drifted as soon as she hit us; I suppose that

if the ferry-boat was going at full speed, or even at half speed, I could have jumped on the bow of the ferry-boat from the position I was in with somebody helping me; I cannot tell you what the height of that rack is; I have not any idea at all; I said we were about 100 feet up from the rack at that time, and at the time of the accident, something like 100 feet.

Redirect by Mr. PATTERSON:

The ferry-boat was going faster than our boat; there was much difference in the speed; our boat was not making much headway against the current; the ferry-boat seemed to be going perhaps three or four times faster than we was; I said that the engine had stopped on our boat before the collision; at the time the engine stopped I see Mr. Williamson round the engine, I didn't see him do anything, handling some part of it; after he did that he said to me: "Take out the oars;" I pulled a few strokes; I don't think I succeeded in making the boat go backwards by those strokes; I pulled two or three strokes; I let go the oars and the boat was upon us; our boat was stopped some time before the collision.

Q. How was it possible if this boat was 200 feet away from you and stopped some time before the collision for your boat to have gone thirty or forty feet after you blew the whistle first?

43 Objected to; objection overruled; exception; not answered.

Q. With these facts in view, do you believe that it went thirty or forty feet after you blew the whistle before collision?

Objected to; objection sustained.

A. I am only guessing, I cannot say.

Q. You don't mean to swear that it did go thirty or forty feet after you blew the whistle?

Motion to strike out last answer as not responsive.

I mean that I was guessing at the distance when I said thirty or forty feet; I am not a good judge of distances on the water.

By Mr. PATTERSON:

The ferry-boat had almost got in the centre of the river after she completed the sweep and headed for the Brooklyn shore; I do not undertake now to say that it took three minutes to come from the point where it completed the sweep to the point of the collision; I could not say how far the boat was from us when it had got to the point which I say was the centre of the river; her bow pointed then right towards Brooklyn, farther down from where we were, farther down the river; she kept on that course, pointed further down or south on the river than we were, right till she got to Brooklyn; when she got near to us she kept going just the same; as she made this sweep it seemed like she was going near the Wallabout farther up the river, and the tide gradually brought her back all the time; I could not say up to what distance she was pointed to the south of us, so that she was moving in the direction which

would take her south of our boat; I did not watch her closely,
44 am not able to tell these things after the excitement of this occasion; certain other distances I have given as having seen this boat I just estimate, I cannot say what they are; I said these piers were a block, only occupied a block; I mean from Broadway to a little below Broadway; I still adhere to that estimate what I call a block; the tide struck us stronger when we got near this slip than it had struck us before; I am not able to accurately state where the boat was when we were at the northernmost rack I did not have my back to the rack; I was in the bow of the boat; as the boat went I was sitting down; I think my back was to it; I don't know; I cannot say, I am sure, whether my back was to the rack.

Recross by defendant's counsel:

When I saw the boat just as she was about to turn first, her head was pointed downstream in the direction the tide was running; when she took the sweep while coming around her head pointed, while she was coming down, to all that part of Brooklyn in front of her which pointed to the slip, and it seemed that she was going to Brooklyn; after she made the sweep the tide kept drifting her down the river; the boat was not coming up against the tide after she had run down with it running acrossways, she was running acrossway for the slip.

By Mr. PATTERSON:

Pointed at the slip south of us.

EDWIN G. SCHUTZ, being called as a witness on behalf of the plaintiff and duly sworn, testified as follows:

Direct examination by Mr. PATTERSON:

I am a medical student; I happened to be a passenger on
45 the evening of Sunday, July 21st, 1895, when an accident happened to a launch; I am a stranger to the parties to this case; I was with a Mr. Valentine on the boat at the time, in front of the ladies' cabin; I won't be sure of the time I took the boat in the city of New York; we were coming down the Hudson our boat landed at Twenty-second street, a few minutes past seven o'clock and the traveling time across town in the Twenty-third Street car I believe was eighteen minutes, so it must have been a few minutes past seven o'clock when we took the car on the New York side; the boat started a very few minutes after we got there; I saw the launch when my attention was called to it, by Mr. Valentine; shortly after I saw the launch they blew their whistles just at that time I saw the launch; I judge the ferry-boat was from 200 to 225 feet from the launch at that time; the state of the light was very light; daylight; the ferry-boat passed a steamer which I believe was named the Blackbird and an excursion barge; we went around very closely to these boats, I believe within two or three feet, very close; I could not say how soon after that my attention

was called to this launch; I judge five or six seconds after that, because my attention was on the excursion boat and the little steamer at the time; the launch was whistling at the time I saw it in plain sight from the deck of the boat, very plain; it seemed to me a few seconds after I heard the whistling of the launch that there was some kind of signal given on the ferry-boat, though the nature of it I do not know at all; the ferry-boat did not seem to slacken up at all; the ferry-boat did not slacken up at all; the launch after the whistle seemed to me almost stationary, a slight movement downstream from the time I saw it, a slight movement from the upward rack toward the lower, so that by the
46 time we got in it was almost in the middle of the slip, a slight movement, very slight; from the time I first saw it till it struck I don't believe more than fifteen or twenty feet away, if that; I could not swear it was that much; the launch seemed to be standing still before it was struck; the movement I saw from the first time I saw the launch till struck by the ferry-boat was very little, as I said ten or fifteen feet, though I would not be sure that much, so that to me it seemed to be stationary at the time; the part of the launch struck by the ferry-boat must have been the fore part; Mr. Williamson was in the middle of the boat; Mr. McCann on the front; I noticed some slackening of speed of this launch; it seemed to me that just before the collision it slacked a little bit; I should not think more than twenty or thirty feet; at 225 feet away I could distinguish two men toward the front part of the boat; I did not notice the man in the rear at all; I did not know that there was a third party in the boat; it was perfectly plain daylight.

By the COURT:

The pilot on the ferry-boat, with reference to where I stood, was just above me and back twenty-five feet away, I guess, occupying a higher place than I; I was on the deck.

By Mr. PATTERSON:

We came within twenty or thirty feet of the launch, and I noticed a slight slackening; then it struck the launch near the front of it, near the front of the launch; when it struck the launch I saw some people helping Mr. McCann up and Mr. Williamson hanging on the front part of the ferry-boat, so that I jumped over the railing and helped him on with a couple of more men; it was not till we got Mr. Williamson on that we knew there was a third party
47 in the boat; after that the launch went under the ferry-boat a little to one side, and was pushed in by the ferry-boat.

Cross-examination by defendant's counsel:

You do not understand me to say that I had been out sailing; that day we went on the Hudson on an excursion and landed at West Twenty-second street, I believe, New York, I came across to the Twenty-third Street ferry and took the boat there and came

down; I do not know what the condition of the tide was, though I believe it was high tide; it must have been high tide; I say that we passed some barge or excursion boats; I say we passed very close to them; I believe they were not lighted up; no, they were not; I remember seeing the people on board and it was not lighted up at that time; I said I believed not, because I would have noticed it if it was; I could not swear that it was; it is my impression that it was not; I did not see this launch till my attention was called to it; that was Mr. Valentine; then, I think, the launch was between 200 and 225 feet away; she was between the two racks at that time farther out from the racks; there was no shadow there at the time, because they were out from the rack; I could not judge how far from the rack, I should not think more than fifteen or twenty feet; not in the middle of the slip when I saw them first; when I saw them first they were between the two slips a little to one side of the centre; I should not think more than fifteen or twenty feet to one side of the centre; the width of the whole slip at that place was thirty-five or forty feet; this boat was ten feet from the centre, or about that: about ten or fifteen feet from the centre; when I first saw her she was 200 to 225 feet from me at that time; the motion of the launch seemed to be very slight; she was heading
48 downstream toward the Battery; I could not tell of my own knowledge; I could tell you of my own knowledge that the boat was being propelled by steam, I saw the smokestack; I could not see the paddle nor the color of the water struck by the wheels; I saw it was a steam-launch by the smokestack; that was just at the time the whistle sounded; I believe it blew one or two whistles and after that a succession of whistles; after I heard it first it kept it up time and time; the boat got fifty or seventy-five feet, probably more than that, seventy-five or a hundred feet near to the launch when it ceased; when the whistling ceased; watching the launch all the time; it seemed to me all the time that the launch was moving but very little; I judged that she was moving almost imperceptibly that ten or fifteen feet from the time I first saw her till the time it was struck; she had moved ten or fifteen feet down the way she had headed; that was not the way the tide was running, that was in the opposite direction; she had moved that ten or fifteen feet against the tide; I said there was some signal on the ferry-boat; from the time I saw the launch till it and the ferry-boat got together seemed to me fifteen or twenty seconds, though I won't be sure of the time; it was not done so quickly, twenty seconds is about as fast as I would count twenty in an ordinary way, but I would not call that quick; I should say three or four seconds of that twenty seconds had elapsed before there was a signal on the ferry-boat; before I saw this boat I was looking at the excursion barge and the steamer we had just cleared; the excursion barge passed on the Brooklyn side of our boat; before the excursion barge came along I had not been looking towards the Brooklyn side, looking towards the New York side; my attention had not been directed to the Brooklyn side before I heard this whistle on the launch; I do
49 not know whether after the signal on the launch anything

was done on the ferry-boat, it seemed to be going just the same as ever; quite fast; I cannot tell you at all what the signal on the ferry-boat I speak of was; I could not say whether I heard a bell or a gong ring; I heard some sound at the time that I took for a signal; it was not a whistle, it was either a bell or a gong; I could not tell you what it was, one blow or a ringing; the ferry-boat was twenty or twenty-five feet away from the launch when I think the speed slackened; that was just a few seconds before the collision, that would be fifteen or sixteen seconds, a few seconds after I heard the whistle from the steam-launch; she did not slacken her speed immediately after I heard what I understood to be the signal on the ferry-boat; she did not seem to me to slacken her speed at all, not at any period till within twenty or thirty feet of the launch; she slackened a little bit just before she struck the launch; I cannot tell whether the engines were reversed and the wheels after that bell; I cannot tell you whether there was first one bell rung and then two; I will not say that there was not on the ferry-boat first one bell rung and then two, and I would not say whether the wheels were reversed or not; I have not had any experience with boats on the water; I don't think they did drift together, no, sir; I don't know whether the ferry-boat wheels were going at the time they came together but it is my impression that they were, I cannot say whether they were or not, only judged by speed; I have talked about this case since then with Mr. Valentine, he is the gentleman with me on the boat at that time, he is to be a witness here; no one else, only with Mrs. MacMahon's lawyers the other night when they subpœnaed me; he saw me at Mrs. MacMahon's house; Mrs. MacMahon requested me to come in and wanted to know if I would serve as a witness, I went there at her request; I had no previous acquaintance with her; that was my first visit to the house; I have not been there since; while I was there Mrs. MacMahon's lawyer came there; Mr. Cooper came; I had a talk with him; I went to Mr. Patterson's office yesterday morning; I have not talked to Mrs. MacMahon since I became acquainted with her, when I went in there the other night that was the first time I ever saw her; called there at her invitation; that invitation was conveyed through a friend of hers, Mr. Ensley; he is the owner of the house in which she lives; I had mentioned the fact about being on this ferry-boat to him; I knew then that Mrs. MacMahon, the widow of the gentleman who had been drowned, lived in his house.

Redirect by Mr. PATTERSON:

I don't know why I could not see the paddle-wheels of the launch; my attention was more called to the people on the launch than to the launch itself; when I say that I could not see the agitation of the water I mean by that, I did not notice that at all; my attention was not called to the wheels at all; I do not mean to say that there was not light enough to see, I mean to say that it was perfectly clear daylight; I think you could see across the river.

By DEFENDANT'S COUNSEL:

There were no lights lit aboard the ferry-boat, I won't swear to it.

By the COURT:

I don't believe there were.

51 By DEFENDANT'S COUNSEL:

I would not say; I could not say; I would not say there were strong electric lights lit on the dock.

By Mr. PATTERSON:

I could not tell how far we had got past the stern of the Blackbird and the barge before my attention was called to the launch.

CHARLES H. VALENTINE, being called as a witness on behalf of the plaintiff and duly sworn, testified as follows:

Direct examination by Mr. PATTERSON:

I was a passenger on the ferry-boat that left the Twenty-third Street slip on Sunday, the 21st of July, 1895, when an accident happened to a launch; I took passage on the ferry-boat about half past seven o'clock on the New York side; my occupation is a clerk in the customs service and a law student; the distance between the launch and the ferry-boat when my attention was called to the launch was 200 feet, I think; just previous to my attention being called the ferry-boat had passed very closely to the stem of the boat Blackbird, which was towing an excursion barge that swung around at the stern of it; the steamboat was towing the excursion barge side by side; we had a very narrow escape from striking the stern of the Blackbird; passed probably about three feet from it; my attention was called to the launch half a minute after that close passage of the Blackbird and the barge took place; I did not notice that they were doing anything particular on the launch at the time I first noticed it, except standing and watching; they were looking out towards our own ferry-boat; shortly after I noticed the
52 launch was there I heard the shrill whistles of the launch blowing repeatedly one signal after another; the ferry-boat at the time I noticed the launch was coming from mid-stream on a slight slant toward the Twenty-third Street ferry slip pointing directly toward it not exactly across the river, but on a slight slant at an angle; after I first noticed the launch, fifteen or twenty seconds probably; no, I will state that over again; after I first noticed the launch I heard the whistle, then a few seconds after that the captain or pilot of the ferry-boat gave a signal which I believe to have been three bells, three taps on the gong rung one after the other, but the boat did not seem to slacken her speed at all till it got within fifty feet of the launch; I was expecting the ferry-boat to come to—the ferry-boat kept on its course as I perceived it at the time without any slacking; the ferry-boat did not slacken her speed till it got

within about fifty feet of the launch, then the ferry-boat proceeded on this slightly reduced speed and struck the launch, which was about twenty-five feet from the mouth of the slip, out toward midstream from the mouth of the slip, and then forced the launch in front of it, the left, the port side of the boat; the forward part of the launch, just beyond the boiler, toward the bow of the boat, was struck; I did not notice whether it broke or not; I could not say; from the time I saw the launch 200 feet away, if it moved at all it moved very little; I did not perceive any motion in the launch, it did not seem to change its position from the time I first saw it till it was struck.

Q. Now was the ferry-boat pointed 200 feet away?

A. Directly towards the slip; toward the launch because it was right between the two racks of the slip, pointed directly toward the slip and toward the launch; I did not notice what became of
53 the men after the blow was struck because the launch went underneath the projecting part of the ferry-boat.

Q. Did you notice what the men were doing beside blowing the whistle as the ferry-boat was bearing down on the launch?

A. They yelled out, "Look out;" the boat was fifty or seventy-five feet away from them when they yelled, after that it did not alter its course, it kept right on; it did not alter its course from the first time I saw the barge.

Cross-examination by defendant's counsel:

The barge in tow of the Blackbird was going upstream.

By Mr. PATTERSON:

It was very light, daylight, a person could see clearly, I saw clearly; 200 feet away I could see them on the boat; I saw the launch and the people on the boat; I saw both sides of the river clearly by the aid of daylight.

By DEFENDANT'S COUNSEL:

I started from one side of the river, the New York side, and got to the Brooklyn side; the Blackbird was going with this tow upstream when we met her, we were coming down; the ferry-boat I was on passed the stern of the Blackbird behind it toward the navy yard; our ferry-boat swept around about that point; she crossed to the Brooklyn side; our boat was coming down toward the Battery; when she passed the Blackbird she swung toward the Brooklyn side close under the Blackbird's stern; then she pointed upstream till she got about opposite the slip, she was below the slip; she kept her speed on; I did not notice the tide particularly though I think it was against us coming down; it was after passing under the stern of the Blackbird that I saw the launch; at the time I
54 saw the launch the ferry-boat was about in midstream; we were 200 feet away from the launch when I think I saw her first; the ferry-boat was then pointing for that slip; at that time when I saw the launch first I had not heard the whistle; immedi-

ately after seeing the launch I heard the whistle or a series of whistles; that continued for a second or two.

Q. Till the ferry-boat got to how near the launch, as well as you could calculate?

A. 150 feet. I think the whistles continued while the ferry-boat was going 150 feet; I could not tell if this was a steam-launch when I saw it first because I did not notice the launch, I was watching the men in the boat.

Q. Your attention was attracted to this boat as you call it and the men in it, but you could not tell whether it was a rowboat or a boat propelled by steam?

A. No, it was a small boat at a distance of 200 feet I did not distinguish that; our ferry-boat got to within thirty or forty feet of this launch before I discovered that it was a steam-launch; I was looking all the time watching the launch intently; I did not notice the smokestack before that, no, sir; I did not see the white awning on that boat before that; I saw men; one was in the bow, one by the boiler, and the other one was in the stern of the boat; the ferry-boat was forty or fifty feet from the launch when I first noticed the men so as to take in their positions; that was just about the time the ferry-boat slacked her speed; I don't know whether the ferry-boat backed water or not; I know the wheels did stop before the boat got to the bridge, because the boat slacked its speed when it got half way to the bridge; I don't know when the wheels stopped before slacking speed, I simply know it occurred; I know the wheels must have stopped at the same time.

55 Q. When did the wheels stop, was it when you were fifty feet away from the launch, did you notice the speed slackening after or before that?

A. After that; it is my recollection that there were three bells given on the ferry-boat; I say positively that there were three bells; I don't remember that there was first a signal bell and then two in succession, I will just say there were three bells; when I saw the launch first she was about the middle of the slip; I know what you mean by the rack; about thirty feet from the longest rack; from the time I saw her first till the launch and the ferry-boat came together I noticed no perceptible motion, no change of position in the launch; I don't remember whether there were any lights on the ferry-boat or not; there was no light on the launch; I don't remember any lights on the dock when I got ashore; I don't know whether there were electric lights on the dock and out on the end of the pier; I don't remember any lights on the Blackbird or barge; as we swept around the stern of the Blackbird we went about twenty or twenty-five feet from the stern of the barge or about three feet of the Blackbird; they were both lashed together; the stern of the Blackbird was not twenty or twenty-five feet behind the stern of the barge; I think the stern of the Blackbird was in front forward of the stern of the barge; we passed so close to the stern of the Blackbird and so far away from the stern of the barge when they were towing side by side because we were pointing at such an angle and the other boats were moving right away from us; I read the name

of the Blackbird, I noticed the name particularly on the side paddle, I know there were paddle-boxes; I don't know how high they were; we came about fifteen feet from the paddle-boxes on which I read her name, I don't remember how large the letters on that
56 part of the paddle-box were; I think about three-quarters of a foot high; the paddle-box was white; the letters black or somewhat colored; the left-hand side of the ferry-boat was next to the paddle-box as we came along.

By the COURT:

I read the name on the boat at a distance, not when we came so close to it; I noticed it when we approached it.

By DEFENDANT'S COUNSEL:

I was forward on the boat next the gates on the right-hand rail on the ladies' side; that was the rail farthest from the Blackbird; I mean to say that the width of the deck was between me and the Blackbird and about fifteen feet more; from my position I was not close enough to the Blackbird to hear if I spoke to them in an ordinary tone; people on the left-hand side of the ferry-boat could have talked with the people; in my judgment it was about twenty or twenty-five seconds from the time I saw this boat first, this launch or this boat till the launch and ferry-boat came together in the slip; I have talked about this case with my companion, Mr. Schutz, and Mr. Cooper from Mr. Patterson's office, he subpœnaed me, never saw him before; I know the plaintiff in this action, I have been to her house only twice; I became acquainted with her through Mr. Cooper, Mr. Cooper introduced me to her; I met him at the house; he called at my house and asked me to call on Mrs. MacMahon and I went again after that a second time; I have been to Mr. Patterson's office once yesterday morning; my attention has been called to the question of lights, in my interview with Mr. Cooper and Mrs. MacMahon.

Redirect by Mr. PATTERSON:

57 I could see both sides of the river during all the passage; I suppose I was about 200 feet from the Blackbird when I could read the name on her; I am not a very good judge of distance on the water, but think I could read that name 200 feet away.

By DEFENDANT'S COUNSEL:

I read the name before I got opposite the paddle-box, at a distance away.

MADS OLSEN, being called as a witness on behalf of the plaintiff and duly sworn, testified as follows:

Direct examination by Mr. PATTERSON:

I am a lithographer painter; on the evening of Sunday, July 21st, 1895, I was foot of South Fifth street on the Glen Island pier,

two blocks from the ferry; I judge these blocks are 200 feet each; I saw an accident happen to the launch, a collision with the ferry-boat; when I first had my attention called to it they were about 250 feet apart, I should judge, 200 to 250 feet; on the launch at the time they were going right ahead you know, but very slowly; I heard a whistle; when I heard the launch whistling I should judge we were about 150 feet apart, at least when they started to whistle; I know the ferry-boat that was approaching the launch was the New York, because, I seen it on the New York side; I could read the name on the ferry-boat across the river very plainly; I read from where I stood to the point of the collision 400 feet away; I did not notice what the men did on the launch as the ferry-boat was approaching because they were keeping on the same course; they were moving up towards the bulkhead outside the pier; the part of the ferry-boat towards me was the side, and the side of the launch was toward me; I saw the ferry-boat
58 strike the launch nothing whatever was done on the ferry-boat before the collision; the same usual course as always when they go into the slip, nothing whatever.

Q. Was anything done towards slackening the speed or stopping the motion of the ferry-boat before the collision occurred?

A. She slackened speed, the same as usual, when they came in the slip.

I think they were fifty to seventy-five feet away when the slackening took place; stopped the wheel from fifty to seventy-five feet away; they backed up just at the certain time of the collision; as soon as the collision occurred (objected to) they began to back the wheel, with reference to the time the collision occurred just when the collision did occur, not before; I did not see what it did to the men on the boat, what happened to them when the collision occurred; the boat was on the upper side of the ferry; it was hid from my view after that; there were boats lying in the ferry slip that obscured my view after that; the sort of light that I saw this with was daylight.

Cross-examination by defendant's counsel:

I am a lithographer painter; that was on Sunday evening; I live at No. 76 South Fourth street; at that time when I saw the accident I was at the foot of South Fifth street, down on the dock; six of us together; just taking some fresh air; I was on the Grand Street side—Greenpoint side of the Twenty-third Street slip toward the Greenpoint side of that slip all the way out on the dock, on the end of the South Fifth Street dock, Glen Island pier; I know what you mean by the rack; I should think the rack next to me on the Twenty-third Street slip run 150 feet out in the river beyond the end of the dock I was on; that would be guess-work; not 150 feet beyond the dock I was on; about twenty-five feet inside the
59 dock I was on; this launch or boat was not outside of the rack on the Twenty-third Street ferry; it was heading for the outside; I do not mean to say that it was within the mouth of the slip; it was just in line of the rack of the slip; not out from

the rack, just in line with it, as far as I could see opposite the end of the rack; the boat was in the water; she was not out from the end of the rack at all; she was right in line with it; opposite the line of the rack, the pier where I was standing right straight; she was in the water.

Q. How far out was she from the end of that rack in the water; how far out from the slip?

A. I judge the slip is 150 feet; I cannot tell; I judge the rack was 150 feet; I don't know the length of it.

By the COURT:

The boat was not from the rack at all, it was in line from the rack; it was not tied to the rack; it was ten or twelve feet from the rack I should judge.

By DEFENDANT'S COUNSEL:

Q. Did the launch leave that spot from the time you saw it first and the time the ferry-boat and the launch came together?

A. It seemed to be pretty near stationary there; I think they came together while the launch was in line with the rack; I saw all this from the end of the pier; this Glen Island pier is about two blocks from the Twenty-third Street dock; I read the name of the ferry-boat from the New York side, coming up; it was on the side of the ferry-boat; I read the name that night of several other boats on the river; I cannot recall them now; I remember I read the name of the New York; that boat was coming in the Twenty-third Street slip; she was on the other side of the river when I saw her first; I did not hear any bell on the boat before the wheels stopped; there were no lights on the ferry-boat; I am sure about that;
60 I think the electric light was lit in the Twenty-third Street slip, but I am not certain of it; I am not certain I saw it; I did not see any light on any boat on the river; it was half past seven; I am sure it was not eight o'clock; I looked to see what time it was; I looked at my own watch; the time was half past seven; I looked at the time because I am in the habit of looking once in a while; my looking at the time had nothing to do with this collision; I looked at my watch at the foot of South Fifth street after the boats came together; I went home at the time, that is the reason I looked at the time; I looked at my watch when I left the ferry slip to go around to the ferry-house to see about the collision; I looked at my watch when I left the pier; then it was half past seven; I have talked with nobody about this since that time but Mrs. MacMahon; I did not know her before this time; I became acquainted with her since that time because I seen a piece in the paper the next morning where it stated that it was foggy on the river; I went up and seen her; I interested myself to call upon her with reference to this matter; I have not called there since; I have talked with Mr. Patterson about it; been to his office yesterday; I talked there with Mr. Patterson; I never saw that steam-launch before; I did not know Mr. Williamson; I told you the ferry-boat backed at the time the collision occurred; from the time the wheels stopped, fifty feet away from

the launch, till the time the boats came together, the wheels stood still.

Redirect by Mr. PATTERSON:

My watch was correct that night.

CHARLES R. HUGHES, being called as a witness on behalf of the plaintiff, and duly sworn, testified as follows:

61 Direct examination by Mr. PATTERSON:

I am the clerk to Coroner Strong of Queens county; I attended the inquest held upon the body of Joseph MacMahon; I read to the various witnesses on that inquest the depositions that are contained in this roll of papers; they were read to the witnesses before they signed them; to each witness and each witness certified that it was correct and signed it; after the body of this man was pulled up I made just an eye examination, that was all; I saw the body after it was taken from the water; possibly half an hour afterwards; it was taken from the water at Newtown creek and East river just about the mouth of the creek; the body was picked up, if I recollect, on the morning of the 25th of July.

Cross-examination by defendant's counsel:

I furnished you with a copy of these minutes, a copy of the same minutes; there was a mark over the forehead of this body, but I won't swear to that though I know the face was marked some; the character of the mark over the forehead or eye was a sort of bruise; I won't swear whether it was cut or an abrasion or a contusion; I am not a physician or surgeon; I won't swear from what I saw what it was; no, sir; if I remember right the mark was at the left eye; over the eye; just about there (indicating) just right across the left temple; I would not swear it was a long wound or like a bruise, from the number of bodies we have to handle and that are found in the river, I always judge that these things happen from their being washed around in the water; as far as its being a bruise or a cut I would not swear to it; I think it was a cut; it was not deep, but there was a cut there; I don't think it showed over an inch long; it extended from over the left eye over the temple;
62 there were several physicians made an examination of the condition; there were Doctor Kennedy and Doctor McEwen.

By Mr. PATTERSON:

I could not tell whether this wound was made after death or before; the physician won't swear to that either.

CHARLES A. ROGERS, being called as a witness on behalf of the plaintiff and duly sworn, testified as follows:

I am a foundryman; on the evening of July 21st, 1895, I was at the Glen Island dock in company with the last witness, Mr. Olsen;

my attention was attracted to the ferry-boat and steam-launch that evening; the little launch was passing the dock where I was and I was watching the ferry-boat coming across; when my attention first came to it the little launch was from where I was I suppose fifty feet; from the launch I heard a whistle; the ferry-boat was away from it when it whistled about 150 feet, I should think; the launch at that time was somewhere about where these racks were where the ferry-boats come in, about there; when I heard the launch whistling and saw the ferry-boat 150 feet away there was not anything done on the ferry-boat as I know of; after that time the ferry-boat came this way toward the launch; I saw a collision.

Q. Did you notice what took place on the ferry-boat at the time of the collision?

A. None whatever.

Q. Did you notice whether the wheels stopped or backed at any time before striking the launch?

A. I did not notice any; I did not notice whether the wheels stopped or backed at any time before striking the launch; it was daylight; I had no difficulty whatever in seeing it two blocks
63 away; at that time, the time the accident occurred, I could see across the river with the daylight; from where I was I could not notice any movement of the launch after blowing three whistles, it was just agoing; the stern of the launch attracted my attention or presented itself to my view; I could not tell just what was doing about the motion or any motion at that time by the way the water was and by the way the launch was headed; I noticed the movement of the paddle-wheels of the ferry-boat when I heard the launch whistling, and the ferry-boat was 150 feet away; they were going round forcing the boat towards the launch; I noticed no change whatever in the movement of these wheels before it struck the launch.

Cross-examination by defendant's counsel:

I was with Mr. Olsen; I saw the launch and the ferry-boat both about the same time; while I was there I saw the launch come along and the ferry-boat coming across, I suppose fifty feet away from me; fifty feet away from me; she had passed the Glen Island dock; she had passed the Glen Island dock but about fifty feet; that was just about two blocks from the rack of the Twenty-third Street ferry to the Glen Island dock; the launch had passed the Glen Island dock going toward the Twenty-third Street ferry about fifty feet when I saw the ferry-boat come across from the New York to the Brooklyn side; she would have 150 feet to go yet before she reached the rack, the little launch; when I saw the ferry-boat I don't know how far she was out in the stream at that time; I ain't any judge of that at all; I have not any judgment; I have not any judgment whatever.

Q. Was she in the middle of the stream, do you know?

A. I have not any judgment whatever; I seen it, I was not paying any attention to it.

64 Q. As a matter of judgment and eyesight, was she in the middle of the stream or not?

A. I say I have not any judgment whatever; I have no knowledge; I cannot tell you whether the ferry-boat was in the middle of the stream at that time; I saw her; I suppose it was turned toward the Brooklyn side at that time for I could see the front of the ferry-boat coming across; I don't know where she was heading for, she was heading for Brooklyn; I don't know whether she was coming toward the Twenty-third — slip or not; there were five other slips she was pointing on an angle on the corner of the rack; this way I suppose, just on an angle just as they generally do to come in; I could not tell at that time whether she was pointed toward the Twenty-third Street slip or not; she was pointing for the Brooklyn side; I saw the boat come across and the launch was coming down; I mean to tell you that she was pointing for the Brooklyn side; I suppose she was coming toward one of these slips.

By the COURT:

Yes, for one of these slips, I suppose.

By DEFENDANT'S COUNSEL:

The end of the rack she was pointed toward was on the Twenty-third Street slip, I suppose; I have not any judgment how far or about how far that ferry-boat at that time was from the end of the rack toward which the ferry-boat was pointed; she seemed to be going at the same gait; no lights as I know of on the ferry-boat; I mean if there was any I should have seen them; I did not see any lights on the ferry-boat; certainly I did not; I will say there was none because I did not see any; I could not tell how long it was from the time I saw the ferry-boat first till the launch
65 and the ferry-boat came together; I saw the launch fifty feet away from the Glen Island dock, she passed along from there to the mouth of the Twenty-third Street ferry slip; going upstream; while she was passing down this 150 or 175 feet to the ferry slip the ferry-boat was coming toward the end of that rack as I said; I cannot tell how long it took that launch to go that distance from the place I saw her first to the place where this collision or alleged collision took place; there was not a storm that afternoon that I know of; my attention was called to this matter after that day; I suppose two or three weeks we talked about it afterwards with parties that were down there with me on the dock, nobody else; I am not acquainted with Mrs. MacMahon; I am not acquainted with Mr. Cooper, only since I got the subpœna; I have been to Mr. Patterson's office; I have talked with Mr. Cooper about this matter.

Redirect by Mr. PATTERSON:

I saw the Twenty-third Street ferry-boat first coming from New York coming over this way, I should judge coming from the opposite side from where we was, down that way a little way, I suppose; looking out from Glen Island dock it was on the left-hand side of

me; I could not tell how fast the little boat was going down toward the slip; going down slowly.

Mrs. ZORAH ROGERS, being called as a witness on behalf of the plaintiff and duly sworn, testified as follows:

Direct examination by Mr. PATTERSON:

I am the wife of the gentleman who was just upon the stand; I was on the Glen Island pier on the night this collision occurred between the launch and the ferry-boat; the ferry-boat at the time I first saw it was about in mid-stream coming toward the
66 Brooklyn side; I saw the little launch near the ferry slip; I heard a sound from the launch; they blew one whistle; they blew one whistle and afterwards they blew a second one; that was two in succession; she blew one slow and then gave two in succession; after that I did not hear any further whistle, no sound whatever; the ferry boat was about, I should say, 200 feet, all of that, from the launch at the time I heard the whistle blowing; the ferry-boat was then pointing toward—I don't know enough about the slips to give you the right explanation—toward Brooklyn; after I heard the whistles blown the ferry-boat, 200 feet distant at the time, sort of slackened up; while it was out in the stream; before the two whistles were blown; the wheels kept moving; when it was slackened the motion of the wheels went slower, but not very much slower, a trifle; before the whistles were blown; after the whistles were blown nothing at all happened to the wheels of the ferry-boat; they kept right on going; the launch was going very slow that I thought she was almost about to stop, I was so terrified; it was struck; I could not say whether or not the wheels of the ferry-boat were going at the time it was struck; the ferry-boat did not slack up any to amount to anything; it did a trifle, but not when the boat was struck; I don't mean it did not slack up any when it struck; I mean it did not slack up any from its outstream slack up; the launch was going very slowly; just before it struck it was going very slow, just a slight movement, very little; I could not say what happened to the men in the launch; it was daylight, perfectly clear daylight; you could plainly see everything.

By the COURT:

I did not wear glasses at the time.

67 By Mr. PATTERSON:

I do not always wear glasses; I just got them lately.

By the COURT:

My eyesight has been failing me ever since I came to this climate so I need to use glasses but did not then; I have only worn them about two months.

By Mr. PATTERSON:

The occasion of my wearing them is, I cannot read without

them; I can see to do my housework, I am able to see distant objects, I can tell time by that clock by taking them off, and even further; the slackening of the speed of the boat happened before the blowing of the whistle that took place first—I noticed these two vessels before they came together; we had been watching them quite a while, watching the launch; the ferry-boat of course, we had been watching numerous ferry-boats that is what we went down for to watch the boats crossing; I did not watch the ferry-boat closely before I saw it 200 feet away; after the launch passed Fifth Street pier the ferry-boat at that time was headed toward Twenty-third street; I should say it took the little launch within eight or ten minutes to go from the Fifth Street pier to the ferry slip; that is the way I should figure it out myself, of course I have no knowledge of it; the ferry-boat ten minutes before the collision took place was heading in the slip; I could not say where the ferry-boat was eight or ten minutes before the collision; the ferry-boat eight or ten minutes before the collision was in the water, that you know, but it was nearing the pier; I would not say where it was eight or ten minutes before the collision, it was crossing towards
68 Brooklyn the little boat was then lying between two slips, or about between the two slips, that is from the Glen Island landing and the other one, between those two; where the sugar-house is there; I would not say how many minutes the little boat took to go from that point to the slip where I saw her between the two; I am no judge of the minute; I am not acquainted with the slips enough to say where the ferry-boat was at the time the little boat was opposite the Sixth Street slip.

Cross-examination by defendant's counsel:

I first noticed the little boat between the two slips, that is the only way I can give it, nearer the Glen Island pier where we were standing; we were on the Glen Island pier; this little boat had not passed the Glen Island pier when I noticed it; I noticed it as she was coming down around that curve; I noticed the little boat as she passed the Glen Island pier; when she passed the Glen Island pier I noticed the ferry-boat about that time; I understand your question; at the time the little boat was passing the Glen Island pier I noticed the ferry-boat; just about that time the ferry-boat was in mid-stream; I would say it was in mid-stream about opposite the Glen Island pier; I think about opposite the Glen Island pier and still going down the river; as I said before, my opinion is that it was eight or ten minutes after that before the ferry-boat made the sweep and turned in to the Brooklyn side; from the time I saw the ferry-boat first till it turned I know it was all of 200 feet away from the landing where we were standing; I should judge that it takes a ferry-boat eight or ten minutes to go 200 feet, my judgment is not much, I don't suppose.

The COURT:

No, it is not good for much.

69 By DEFENDANT'S COUNSEL:

The little boat had got about half way down towards the Twenty-third Street slip before the ferry-boat turned and undertook to come in the slip; about half way from the Glen Island pier to the Twenty-third Street slip when the ferry-boat turned and came into the Twenty-third Street slip; after the whistle was blown the ferry-boat slackened her speed, very little though; that is what I said, before the whistle was blown she slackened her speed; I could not say how far she was away from the Twenty-third Street slip when she slackened her speed; I have no judgment about it; that was about the time the little boat got half way to the Twenty-third Street slip when the ferry-boat slackened her speed; the ferry-boat slackened her speed coming toward the Twenty-third Street slip, when the little boat was half way between the Glen Island pier and the Twenty-third Street slip; I have got it in my mind very clearly, no embarrassment whatever about that; I know it absolutely; I say she slackened her speed, but not to any great extent; I observed the wheels of the ferry-boat; I did not notice whether they stopped at any period before the whistle, I could not say that; she seemed to me to be going along just a very little short of the speed she had been going down the river with; just a little slackened; when she turned in that way toward the Twenty-third Street slip the little boat still kept on her way, very slow; she was going very slow; just about the same time the little boat got to the Twenty-third Street slip the ferry-boat got there to-; the little boat got about the middle of the slip when the collision took place; just as she was about to turn in; I did not notice the little boat stop at all; whether she stopped still or not I could not say. I said she was going
70 slow; she did not stop before the ferry-boat struck her to my knowledge; I think they were both moving at the time of the collision; I did not hear any bell on the steamboat or from the steamboat; I should say the ferry-boat was fifty or seventy-five feet away when the little boat whistled; the little boat at this time was going toward the mouth of the dock when she whistled; after the whistling she continued toward the mouth of the dock.

Redirect by Mr. PATTERSON:

I could not say whether she stopped or not; I don't know whether she stopped or not, but I don't think she did; well I know she was going at the same speed as before; I will say that; I say no, she did not stop; I say she did not stop.

Q. With the boat going that much away from you this 400 feet, and having turned toward you, could you tell if it stopped or not?

Objected to; objection overruled; exception.

Q. Could you tell under those circumstances whether a boat was moving or had just stopped?

Objected to; objection overruled; exception.

Q. Whether this boat was moving or not?

A. The launch?
Q. Yes.
A. She was going.

BENJAMIN HARLING, being called as a witness on behalf of the plaintiff, and duly sworn, testified as follows:

Direct examination by Mr. PATTERSON:

I was on the Fifth Street pier on the night this accident happened; I first saw the launch when it was passing the pier; I watched it go right along; I kept my eye on it going right along all the
71 time, going towards the Broadway ferries; I heard it blow the whistle; it was then near the Twenty-third Street ferry; the ferry-boat at that time was coming right over toward it; the ferry-boat at the time the steam-launch blew the whistle was about 150 feet away; it was daylight; I saw across the river; at the time the accident happened I saw the other side plainly; I don't know what time it was; the launch when she blew the whistle was about ten feet from the Twenty-third Street slip; the ferry-boat was 150 feet away, coming towards me; after that the ferry-boat struck her; I did not notice any slackening of speed on the ferry-boat before it struck her; I did not notice whether there was any difference in the motion of the wheels; I did not notice the wheels at all; I did not notice the wheels of the ferry-boat.

Cross-examination by defendant's counsel:

I was on the Glen Island dock; this lady was on the dock too; I saw the steam-launch approaching the Twenty-third Street slip, at the foot of Broadway, Brooklyn; at that time the steam-launch blew her whistle when near the Twenty-third Street slip; I should judge she was ten feet above the rack when she blew the whistle; she was above the rack some distance and she was going in the direction to pass the mouth of the Twenty-third Street ferry; going not fast; she was not going as fast as she had been going, she had slacked up some; the current was pretty heavy and it was all she could do to get through there; I could not tell that she slacked up by reason of her slackening her speed or because the current did not allow her to pass so fast; I think her speed was slackened about the place where she blew the whistle; in some way; yes, sir; at
that time the ferry-boat was coming for the slip 150 feet
72 away; I saw the collision; the little boat kept on her course till she got in the Twenty-third Street slip and the ferry-boat came in on top of her.

Redirect by Mr. PATTERSON:

The launch did not stop before the collision, that is the way it seemed to me.

WILLIAM BATES, being called as a witness on behalf of the plaintiff, and duly sworn, testified as follows:

Direct examination by Mr. PATTERSON:

At the time of the accident I was on the Glen Island dock; I saw the accident; the first I saw of the launch was it came sailing along, I should think, within about ten to twelve feet from the dock, went directly across to the ferry slip and there seemed to come in contact with the steamer, and they blew their whistles vigorously, and the time she was going on I see them let out their fires and so on and in a little while everything became perfectly quiet; the launch let out their fire, apparently, while the whistles were blown; you could see it come out, dropping it out, I suppose, in the water, I don't know, you know; I could not tell from the distance I was how they get the fire out of the boat; it was great difficulty for me to see as much as I did, because, you understand, I don't wear glasses and I am sixty-three years of age; the ferry-boat, when the launch was blowing the whistles vigorously and putting out the fire, was right on top of her, it seemed to me; the launch commenced blowing her whistles when she passed the Fifth Street dock and kept it up; even when she came in contact with the steamer she kept blowing all the time; when the launch passed my dock the ferry-boat was making her way towards the slip; I know that; I would not
73 like to say anything more definite than that; the boat went past our dock in a slow, easy sort of way; going about a middling gait, as fast as you could imagine they could go against the stream; it was daylight; my eyesight is failing a little because I follow a business that is trying it very much; I am a painter; I did not see the little boat till she came to our dock; I could distinguish anything across the river; you could see the other side of the river very plain, comparatively.

Cross-examination by defendant's counsel:

I was out on the end of the Glen Island pier for a little while that evening and came back to the lower part on the left side; I was standing on the left side when I saw the little boat come along, on the left hand of the Glen Island pier; a little this side the end of the pier there is a little wooden house there, and I was just the other side of that; nothing to obstruct my view; I observed the little boat passing, on the Glen Island pier; I said that she went along at a moderate gait average, what you could expect from the steam she carried; I noticed the people in the boat, I just noticed them that is all; they were talking and certainly seemed excited and brushing around a little as they naturally would under such circumstances; the boat kept on going towards the Twenty-third Street slip at the same rate of speed that I noticed; kept on at the same gait; I saw the ferry-boat before she came past our dock; I see her when she was just in the end of the pier; I see her when pointed towards her slip; I saw her pointing for that dock the first time the little boat had not quite got up to the Twenty-third Street slip; distances are

very awkward things to calculate but I should imagine she
74 had at that time perhaps five minutes in time or so to get to the Twenty-third Street slip; when I saw the ferry-boat come in towards that slip I should think the little boat had about half the distance to go; the little boat before she could possibly come in contact with the steamer, I mean the little boat had got half the distance from the Glen Island pier to the slip when the ferry-boat came pointing in the slip; I think somewheres about that; that is as near as I can calculate; I did not say when I saw the ferry-boat pointing for that slip, I think she was 150 feet out; I saw the ferry-boat pointing towards the slip; I saw the little boat about half way between the Glen Island pier and the Twenty-third Street slip on the Brooklyn side; going towards the Twenty-third Street slip; then I saw the ferry-boat come in towards that slip at that time; I should say the ferry-boat at that time must have been within the neighborhood of 150 feet or so from the slip; I should think so; the ferry-boat slackened her speed a trifle, but it was nothing very perceptible; still it was perceptible; the little boat had to slacken; they did as they found themselves getting nearer the steamer, of course; the little boat began to slacken her speed a little the other side of the slip; a little before getting to the slip and when the steamer came in close she was brought of course to a dead stop; they seemed to me to blow their whistles all the time; then there were several whistles blown; they began to blow the whistle when they seen them pass the Glen Island dock there and when they got up in the neighborhood of the steamer they blew it several times and kept on blowing; I know that steam-launches having whistles sometimes blow them as a salute when passing there; this launch blew the whistle in passing this Glen Island dock and blew
75 several whistles when they got down to the Twenty-third Street slip and kept that up to the collision and during the time of the collision; I am sure I cannot explain any nearer what I said about their putting the fires out than that; I know not how they put out fires on these steamers; I suppose they raked it out.

By the COURT:

I see them putting out the fire; that is all I could see.

By DEFENDANT'S COUNSEL:

I guess they were throwing the fires overboard; I could not tell I seen the fire going out of the steamer; I would not be certain whether the furnace door of this little boat opened aft or forward; I think it was nothing more than the open furnace or grate of the little boat I saw; I think they were putting the fire out.

AUGUST KELLER, being called as a witness on behalf of the plaintiff and duly sworn, testified as follows:

Direct examination by Mr. PATTERSON:

I have been in this country twenty-one years; I was in the sugar-house, Havemeyer & Elders, between South Second and Third

streets; on the tenth story, there are eleven stories in the building; I saw the boats come together; the first what I see the little boat lays up to South Second street and Third street, then I see the little boat with side wheels, so I had fun on it, I never see such a boat like this; I mean I took pleasure in watching it; then afterwards the boat went away, then I looked after it, it goes very slowly to the Broadway ferry, too; when the little boat blows three times then I
76 was looking out the window and thought there must be something the matter; then I see the ferry-boat come from the New York side; the little boat was nearly to the Twenty-third Street ferry when it blew three times; then when the whistle blew I looked after that ferry-boat and the ferry-boat—then I see them come together; then after the ferry-boat goes into the slip I was watching, I could not see the little boat any more; the ferry-boat was 150 or 160 feet from the little boat when the little boat first blew the whistles; I thought about 150 feet; hard to tell from where I was; I could not tell whether the ferry-boat stopped after the little boat blew the whistle I see it runs all the time ahead; I could not tell whether they stopped the engine; I was at South Third street, this occurred at South Seventh street; I was four blocks away; I could see it plainly at that distance; there was good light, daylight.

No cross-examination.

FRANK SCKECKER, being called as a witness on behalf of the plaintiff and duly sworn, testified as follows:

Direct examination by Mr. PATTERSON:

My business is working in the sugar refinery, Havemeyer's; I recollect being in the sugar refinery on the 21st day of July, 1895; on the tenth story with this other man, the last witness who was there; my attention was attracted to an accident of a steam-launch; about half past seven; I saw the little boat; I seen the launch went past the ferry and heard the whistle three times; the launch when she whistled was about right in front of the ferry; right in front of the ferry slip; I see the ferry-boat come from New York; the ferry-boat was about 100 to 150 feet away at the time the launch whistled; the launch at that time was just about in front of
77 the ferry slip; did not see what the ferry-boat did after the launch whistled; I cannot say; the ferry-boat runs straight ahead; it hit the launch; I cannot tell whether it went any slower or not, I see the ferry-boat run right straight ahead; it was daylight; I saw across the river from one side to the other.

Cross-examination by defendant's counsel:

I was in the sugar refinery at that time; four blocks from the ferry; I was in the tenth story, looking out the window there, I was looking out before the collision about a quarter of an hour; I looked out, watched the little boat and as soon as the ferry-boat went in the slip I moved away; I was looking out of an open win-

dow; I held my head out of the window; the window was open; the launch when it whistled was just in front of the slip; I heard the whistle; I did not hear any whistling before that; the Glen Island pier is nearer to where I was than the ferry slip; nearer by two blocks; I heard the launch whistle when she was just in front of the slip but not before; I think the ferry-boat was then 100 or 150 feet away; going right to the slip; I could not see if the launch stopped or not.

JOHN WILLIAMSON, being called as a witness on behalf of the plaintiff and duly sworn, testified as follows:

Direct examination by Mr. PATTERSON:

I live at 300 Hooper street; my business is machinist; I have had experience as an engineer; I have had quite considerable experience making engines; something like fifteen or twenty years; I have been running engines, too; I have about fifteen and a half years' experience in running engines; marine engineer; I have no license from this country; I was second engineer in different parts of the globe.

78 By the COURT:

From Rio Janeiro to Robinson's stores here; they are in Brooklyn; from Rio Janeiro back to Robinson's stores; running the mail up the east coast of Africa or south coast of Africa as engineer about four years; four years running the engine on that boat; I think I have other experience, I am not sure of it; my experience in running the engine of this launch is I simply, chiefly in one sense of the word of the three parts, made the engine in the first place; about 1893—1892; the size of this launch we run is about 22 feet long by 5 feet 2 inches beam; the engine and boiler were situated amidships; she was an open boat, so speaking; she was decked about 4 or 5 inches on the side with a rail projecting up, forming a kind of cockpit they call it, I am not much of a sailor or carpenter; it came up the rail 5 or 5½ inches; she was decked forward; she was decked all along the way on each side; she was decked all the way across; forward and aft; about 3 feet 6 inches forward; about 3 feet after space; I had her out before this time down toward the navy yard; I had not gone out sailing in this boat in that location before the occasion on which this accident happened.

By the COURT:

I said down to the navy yard.

By Mr. PATTERSON:

Before the accident I had gone on her about that distance; back again to where I came from, the navy yard to Wallabout basin.

By the COURT:

She was an old boat; the machinery had been put in some time before.

79 By Mr. PATTERSON:

The machinery was put in betwixt 1891 and 1892; she was a side-wheel boat; for the purpose side wheel, automatical propelling power; automatic is anything that has got a movement in it; turning around like this (indicating with his hand); there was something peculiar about this engine and side-wheel propellors different from any other, the moving of the blades; it goes around till it gets toward the water, and then turns and makes one-fifth of a circle; movable blades in the paddle-wheel.

By the COURT:

Some new design of my own, and different from anything anybody had built before.

By Mr. PATTERSON:

We started from the navy yard on this boat that night about half past 5; I was going downstream to South Second street, making that way; we put in there; we stopped there, I presume, about an hour and twenty minutes; an hour and twenty minutes we stayed there, then I thought it would be about time we moved away; we were simply oiling, cleaning and fixing up; we did nothing after we stayed there that length of time.

By the COURT:

Just talking and saying we ought to be going; we left there; we came out of the dock at South Second street.

By Mr. PATTERSON:

Come up against the stream making towards the navy yard, to go into the Wallabout basin again; the stream was moving at that point coming out of the dock four and a half to five miles an
80 hour; the tide was four and a half to five miles per hour; our boat moved against the tide by the action of the machinery two miles and a half to three miles an hour; my attention was attracted to the ferry-boat; I was acting as engineer in the boat, MacMahon was holding the tiller to steer the boat; I gave him directions; I told him where I wanted him to go; Mr. McCann was forward of the boat; at the time my attention was attracted to it, the ferry-boat was about 450 feet away; our boat at that time betwixt fifty and sixty feet of the long pier, making to the long pier; I mean fifty or sixty feet from the point of the collision, making towards the long pier; the long pier is the point that comes out between the two ferry slips; between the Twenty-third Street and Grand Street ferry slips; a shorter pier is on the Twenty-third Street side of the ferry slip; when the ferry-boat was 450 feet away from us, from all appearances she was making to the Brooklyn side, the Brooklyn shore.

Objected to.

At the time I saw her she was going fast; we were going three

miles an hour, somewhere about three miles an hour; from the way that boat was pointing if she kept going the way she was pointing she would never have gone into the Twenty-third Street slip; the point to which she was pointing was Grand street, next slip to Twenty-third Street slip; the slip next to the south; the next beyond us; pointing and making towards this slip; we kept moving along slowly; on the ferry-boat as we were moving along slowly they were making in toward the Grand Street slip; all the time we were moving; I blew the whistle on our boat; the ferry-boat was something like about 200 feet distant from our boat when the
81 whistle was blown on our boat; the ferry boat was making then pretty fair speed; still keeping the same point from all appearances for Grand street; for the Grand Street slip; our boat then was getting up towards this long pier; opposite the Twenty-third Street slip toward the long pier; I said that we blew our whistle when the ferry-boat was 200 feet away and at that time we were coming toward the long pier; our boat at that time when coming toward the long pier was something like about ten or fifteen feet, ten or eleven feet of the long pier; moving slowly; within sixty feet, I calculate, of the launch the ferry-boat had made a turn altering her course to go into the Twenty-third Street slip; before it made that turn the ferry-boat was pointing to Grand street; Grand Street slip; our boat was not in line of the Grand Street slip; it was a great way off being in line with the Grand Street slip; our boat had not reached to the Grand Street slip at the time the ferry-boat made the turn; when I saw the ferry-boat make the turn I shut off the steam; I saw there was likely to be a collision; after I shut off the steam I stopped the engine; after stopping the engine I tried to go astern; put her into stern gear; moved the lever which is termed the eccentric over into the stern gear in the quadrant; fetched the eccentric rod that gives the motion to the head gear into that end of the quadrant that works up and down like that is from this end to that to send the boat astern; the engine did not answer; something was wrong with the engine; I did not know what it was till afterwards; I did not know at that time; then when the engine failed to go astern I spoke to Mr. McCann; I told him to get out the oars, and I says, "For God's sake pull out the oars;" he
82 tried to pull the boat with his back towards the stern of the boat; he might have given one or two pulls, I could not say; after giving these one or two pulls he got somewhat nervous and jumped onto the forward part of the launch, that is what is called the poop deck, I understand; he got off the launch or otherwise was pulled up to the ferry-boat; I cannot put it any different; the ferry-boat struck the launch soon after that; from the time I stopped the engine I say the ferry-boat was sixty feet away when she changed her course and I stopped the engine; from that time the ferry-boat slackened her speed some slight, very little; kept going on; after she made this alteration in her course she took straight across into Twenty-third street; before she made this alteration in her course she was not pointed at our boat; after she made this alteration in her course she pointed right direct onto the boat, onto

the launch; our boat was not in the line of passage of the ferry-boat before the ferry-boat made the alteration in her course; the sort of light on this occurrence was daylight, good light.

Q. Did you see across the river from where you were?

A. Why, easy; I had a lamp in my boat; I did not have it lit at this time; it was in the locker; it was not available at this time for lighting; we had it ready to light not at this time; that is where the difference comes in, it was in amongst the rope and other things in the seat locker and upon pulling it, from my imagination; there was a lamp in that seat locker.

By the COURT:

It was all fixed up for lighting.

By Mr. PATTERSON:

But I had not lit it yet.

83 By the COURT:

It was not there to light at that time, it was overboard; before the collision.

Mr. PATTERSON:

While I was getting those ropes and things from the locker it went overboard; before we started from South Second street; we had no lamp aboard at the time; after the ferry-boat altered her course and struck us our boat was sent right into the dock; the ferry-boat followed it right in, brought the launch ahead of it; when I saw that boat coming in pointed toward the Grand Street slip I expected she was going into the Grand Street slip; I did not know that she was going into the Twenty-third Street slip; I did not know that she was bound from the Twenty-third Street slip till she made this alteration in her course; I saw the launch after the injury; the steam pipes was broken and the boiler, the whistle, the governor of the whistle, the smokestack, we will call it, and likewise damaged the engines and the boat; the frame of the boat was broken somewhat; a little of the beading of the frame was broken, it had gone right through, or nearly so where it had been hit; after the collision Mr. MacMahon was not seen; from the time of the collision I never saw him till he was picked up at Newtown creek.

Cross-examination by defendant's counsel:

I am now engaged in mechanic business, anything that comes along; electrician, cleaning clocks, making locks, making gas, fixing bells—locksmith and bell-hanging business, just now; I have been in that business perhaps ten years; it is about twenty-six or twenty-seven years since I first went to sea; I went then as
84 an engineer, from Hull, England; coasting up the Baltic; my position then was engineer; the vessel was in the coasting trade; she had two engines; I suppose about six firemen; my

position was engineer; engineer, second engineer; I could not tell you exactly how long I belonged to that vessel, I can get it for you if you want it; perhaps a year or a year and a half; it was something like a couple of weeks before I went on any other vessel as engineer; the last vessel I went to sea on to Rio Janiero, that was the last vessel; the last vessel I acted as engineer on was the one I went to Rio Janiero on; I left that vessel ten or eleven years ago; and since that time I have been in this business; my place of business has been No. 298 Hooper street, in the eastern district; I sometime go to New York occasionally; during the ten years I have referred to sometimes I went to New York once a month, sometimes not for two or three months; I usually went to New York by Roosevelt street, from the foot of Broadway, I suppose that is South Eighth street; it was to the left of Broadway; it is not from the foot of Broadway; the Twenty-third Street ferry is directly in front of the foot of Broadway; Grand Street ferry adjoins that; I suppose the ferry that adjoins that would be Roosevelt street, so that the entrance to the Roosevelt Street ferry on the Brooklyn side is not directly at the foot of Broadway, but two slips adjoining; the Twenty-third Street ferry is among the three or four ferries that are there, next to Grand Street ferry; the first one at the foot of Broadway is Grand street; the next to the left is Roosevelt ferry; to the right of the *the* middle one is Twenty-third Street ferry; that has been so ever since I can remember, or nearly so; when I crossed to New York I crossed chiefly by Roosevelt ferry, I never had any calls any other way; I did not know the other ferries were
85 working with steam ferry-boats crossing the river; I should be telling an untruth if I said they was not working.

By Mr. PATTERSON:

I knew it.

By DEFENDANT'S COUNSEL:

I first saw this boat I have spoken of that Sunday evening, the 21st of July last; I first saw this boat I have spoken of on the 21st of July last to my knowledge; I mean the ferry-boat; I first saw the hull of this steam-launch that I was in that night in 1891, some time; I first saw this boat, this hull, in the Wallabout; there was a boiler or engine in the boat at that time; she passed into my possession after that right away; I did not buy her; she passed into my possession from the hands of Doctor Harford; she remained in my possession from that time till the time of the collision; to prove the invention, that is what the boat was bought for; I got the boat from the Doctor for the purpose of working the engine and working the boat, I was interested with the boat; there was change in that engine or boiler from the time I got possession of it from the Doctor till the time of the collision; there were changes made in the engine; I made those changes; I made the alterations; the engines were taken out of that boat; a few months after I took possession I took them out to repair; they were out of repair; the engines were out of the boat a few months; after the boat came

into my possession with the engine in her at that time that engine was taken out and another engine put in; I said a few months after, a bit ago; I built three parts of the other engine; that engine came out of Kent avenue or Wythe avenue; it was a second-hand engine;
I could not say where it had been; it had not been in a pro-
86 peller, not that I am aware of; the diameter of the paddle,
the wheel on each side, was something like twenty-two or twenty-three inches; twenty-two or twenty-three inches; three flukes on each wheel; they were applied in what is called the hub; set into the hub; they were not fastened to the boat at all; the frame of the wheel was iron; the flukes on that wheel were movable and so constructed that as the fluke came down and the wheel revolved the edge would strike the water; go in on the edge; go in on its edge and go out on its edge; the length of these flukes is ten or eleven inches and the width at that time three and one-half or four inches; three in each wheel; there was a new principle applied to this boat by me after I got her in my possession; the new appliance was this patent on each side which is termed the propeller or automatic blades revolving around like a side wheel; I had previous experience of such process as that; I had occasion to experiment with the boat in regard to that engine and its way of working with the wheels; I continued my experiments I suppose six or seven years.

By the COURT:

As practically applied to the working and use of boats.

By DEF'T'S COUNSEL:

I had experimented with this boat; I continued to experiment with this boat three months in every year; I was experimenting with her on the night in question and went out for that purpose; the experiment I was trying that night when I took this boat out was to find out whether she could go against the current that I had previously noticed did not know whether she could or not when I
started out and I went out to try it; that is what I did; I
87 have no United States license as a pilot; nor as a United
States engineer; I do not know anything about steering or sailing a boat; nothing at all, I never had anything to do with it; I was experimenting with the propelling power on the engine; this engine was so constructed that by a process I could manipulate, I could reverse the wheels ordinarily, and that for instance if she was going ahead and I reversed the engine by this process it would reverse the wheels so as to drive her astern; it would take me standing by my engine and brake ready for the purpose of reversing, to reverse the wheel, perhaps half a minute; the motion I had to make for the purpose of reversing was fetching it out of one place over into the other in the quadrant, drawing this lever about eight inches; getting it out of there and putting it into there out of the slot out of one position into another would take perhaps a quarter of a minute; I did not know that anything was the matter with my engine or gear that night before I went out; but I found when

I attempted to reverse the engine that it could not work; I did not know why then; if I had succeeded in reversing the engine and the engine had worked I would have got out of the way of this ferry-boat, pretty nearly; I think I would absolutely; I was sworn before the coroner; I stated there as I state now that if the engine had worked I could have got out of the road; the first sight I had of this ferry-boat was when she was making the turn first 450 feet away from the Brooklyn shore; the ferry-boat was then on a line opposite somewhere betwixt Grand and Roosevelt Street ferries, in that direction when she was making the turn; I believe I understand what that investigation before the coroner was.

Q. Did you say one word about the ferry-boat changing her course when she got in towards the dock as I have stated here before the coroner?

88 A. I did; I did say that before the coroner; I recollect that very distinctly; I did not invite these people to go out that night; Charles McCann came and called on me; he came to my house and called on me to go to Mr. MacMahon's; the invitation was passed from him to Mr. MacMahon, and he says, "We might as well," he says, "I would like to go and see this apparatus work, I am going to go on with my work Monday morning;" that he would like to see how this apparatus worked.

JOSEPH GROSE, being called as a witness on behalf of the plaintiff, and duly sworn, testified as follows:

Direct examination by Mr. PATTERSON:

I am an importer of dry goods and silks; I knew Mr. Joseph MacMahon in his lifetime; he was employed in my establishment; he was employed there eighteen years; at the time of his death he was receiving a fixed salary of $1,500 a year and a commission of two per cent. on his sales over $60,000 during the year; the year preceding he was actually paid $1,500, plus a bonus of $300—$1,800; a new arrangement was made from the first of January, 1895, and he was to receive $1,500 fixed salary, plus a commission of two per cent. on his sales over $60,000.

Objection overruled; exception.

Q. What had his sales been the year preceding his death?

Objection renewed and overruled; exception.

A. $80,000; he remained in my employ up to the day of his death.

Cross-examination by def't's counsel:

89 He had a contract with me for the year; contracts were renewed year after year each year; this contract would have expired in 1896.

JOHN WILLIAMSON, being recalled by defendant, testified further as follows:

Cross-examination continued by defendant's counsel:

This boat got at the time when the boats came together thirty feet from middle of slip, just the middle of the slip; it was within thirty feet of the pier, and about thirty feet from the long pier; I had not got about thirty feet past the rack; I was drawing up to the long pier; I know what you mean by the rack, the rack is the line of boards that come out on each side of the slip, so as to make the entrance for the boats; when the boat stopped I was right opposite the rack with the stem of the boat; I understand your question; there were two racks to the slips that come out like that, that make the slip; I understand, I came down this way with my boat; I mean to say that I stopped in front of this rack, with the stem of the boat: the stem of my boat had got pretty near up to that rack; we were 30 feet out, betwixt 20 and 30 feet; I was examined before the coroner; my recollection is better now, my memory, than it was at the time of the jury; I could not exactly say how long after the accident I was examined before the coroner, some weeks; I said before the coroner that it was about 20 feet at that point, to pass the end of the rack, to clear the rack about 20 feet; 20 to 30 feet; possibly I might have said before the coroner that I was out about 20 feet, or the end of the pier; I won't be certain about it; if I said that it was correct; I first saw the ferry-boat when she was making the turn in mid-stream for the Brooklyn shore; perhaps she was 450 feet from our boat at that time; I did not say before the
90 coroner: "When I first saw the ferry-boat it was about mid-stream; at that time our boat was 60 or 70 feet away."

Q. First I asked you if the boat was 60 or 70 feet away; you said that you did not. Now I ask you if you added "At that time I surmised I would not have time to get by before she could get into the slip, or before she got onto the boat. It was at that time I stopped my engine."

Mr. PATTERSON:

It is a question of punctuation.

Q. "At that time our boat was 60 or 70 feet away;" if I take your punctuation of it, take in the words 'at that time,' it begins with 'at that time' and ends with 'at that time' it is in twice; did you say: "I surmised that I would not have time to get by before she could get into the slip or before she got onto the boat. It was at that time I stopped the engine."

A. I did.

I said before the coroner, "We were then near the slip, or right opposite of a point upon it to bring the boat out and clear of twenty feet of the slip;" I did not say the ferry-boat was in mid-stream when she signalled; I have got that quite clear in my mind; I did say the ferry-boat was in mid-stream when I signalled, meaning our boat; I did say this, "Seeing the boat was so close upon us, I was afraid to venture to go ahead;" I did say, "When I stopped the

ferry-boat was about sixty feet distant;" I did say, "Seeing the danger, I told McCann to get his oar ready in case I failed to back the engine;" he did get the oars out, and he tried to pull a stroke or two; I should think he made an effort; he did not sit down; he stood up, with his back forward, backing, standing forward of the launch, right forward of the bow; he stood up in this boat; that boat had a bow; the bow of a boat
91 means forward of the boat; and then there was a stern; that was in the opposite end; his back as he stood up in the boat, was facing towards the bow; his back was forward of the boat, to the forward end of the boat; at least, I should say, his back was to the after part of the boat; his back, as he stood up at these oars, was towards the stern of the boat where Mr. MacMahon was sitting; his face was forward; I did see what preparation Mr. McCann made to get the oars out; the row-locks were already in the gunwale of the boat; he had nothing to do but put in the oars; I did not say this, "One second passed from the moment the engine stopped till the collision happened;" I said three seconds; I never said one second; I told Mr. McCann to get out the oars in case I failed to back the engine; seeing the danger, I thought it would be better for two to work, and proper, than one; I said before the coroner that I told Mr. McCann to get out his oars in case I should fail to reverse the engine; I can give the jury no other reason than I have stated why I told that to Mr. McCann; when I asked him to get out the oars in case I failed to reverse the engine it is quite possible I had apprehension in my mind that I might not reverse the engine; I did say this: "I knew if he could give two pulls astern we could have cleared the ferry-boat;" I did say this: "Our boat did not turn over or sink or throw me out, did not knock McCann out;" I did say: "I know MacMahon did not jump out, he was sitting in the stern of the boat at the time of the collision;" I did say: "MacMahon was sitting at the tiller;" I did say: "Left him at the time I made the attempt to get on the ferry-boat;" that is correct; I did say: "I think the rudder of the ferry-boat struck our boat, the one acting as the stem;" I did not particularly notice any lights at that time on the ferry-boat; I could not possi-
92 bly swear whether she had any lights or a light on her; I did say this before the coroner: "The ferry-boat had lights on her; it was time to have lights on board; I lost our lamp, had the lamp on the boat when we started out, had no light or lamp when we were returning, but claim I ought to have had;" it is possible I might have said there were lights, I am not positive that I said so; I don't know whether I said so; of course I said, "It was time to have lights on boats;" I did say: "I lost our lamp, had a lamp on board when we started out;" "had no light or lamp when we were returning but claim I ought to have had;" possibly I might have said there were lights on the ferry-boat; possibly she might have had lights on; I could not possibly say whether she had or not; I did say this before the coroner: "I don't understand signals or lights of boats;" "could not perceive if the ferry-boat shut off steam;" I said that; that is the fact; the engines were

working when I blew the whistle; I did say this: "I don't think our boat went a yard after I stopped the engine;" I don't remember saying, "We had been aware that the ferry-boat was coming into that slip and if we had stopped our engine thirty seconds before our boat would not have been struck;" it is not the fact, so that if I did say it it was not true; I humbly beg pardon that is true; I had to stop after she made the turn; I did say: "MacMahon done the steering, he was in charge;" I did say: "I asked him if he thought we would be able to get by, he said he was afraid not;" well, he said, "Do what you think best I shall not stop;" that is right; this boat had been inspected by the United States authorities; I bought her in 1891; after that boat went into my possession she was never inspected by the United States authorities; I made this reversing gear and lever I speak of; when I say that when Mr. Mac-
93 Mahon said, "Do what you think best, I shall not stop," I did add: "Our boat should not change her course."

DEFENDANT'S COUNSEL: I read from the testimony before the coroner while the witness is on the stand: "One second passed from the moment the engine stopped till the collision happened."

Redirect by Mr. PATTERSON:

When asked if I could get out of the way I said I could pretty near if I had succeeded in getting my engine in the reverse motion; I meant that I might have done so, I might have got clear; it was that close that it would be hard for me to say; I did know what the tiller was there for and how it was moved; well, I could move it when the boat was required to go in either direction; I had steered boats before with tillers; some, not much; I did not observe Mr. MacMahon how he used the tiller of the boat; I did give directions to Mr. MacMahon about the point for which I wanted the boat steered; it was properly steered for those points.

Objected to.

It was steered for these points.

DEFENDANT'S COUNSEL: I read from the testimony before the coroner, this witness said "The ferry-boat had lights on."

By Mr. PATTERSON:

Q. You were asked if you did not swear "When I saw the ferry-boat it was in mid-stream; at that time our boat was sixty or seventy feet away; when I first saw the ferry-boat it was in mid-stream; did not recognize the ferry-boat as coming into the Twenty-third Street slip; did not know whether it was bound for the Grand Street slip or not, till she came in the direction of the
94 Twenty-third Street slip; at that time our boat was sixty or seventy feet away"?

A. That is what I said.

By DEFENDANT'S COUNSEL:

Q. Did you distinguish between the question I put to you as not involving all that Mr. Patterson asked you in this question and answered it for that reason?

A. I understood it more distinctly from the way Mr. Patterson put it.

Q. That is the reason you answered it that way?

A. That is the way.

Mr. PATTERSON: I will offer the almanac in evidence to prove what time the sun set that night.

"Sun set, 7.26."

HAMILTON GRAHAM, being called as a witness on behalf of the plaintiff, and duly sworn, testified as follows:

Direct examination by Mr. PATTERSON:

At present I reside at No. 111 West Thirty-ninth street, New York; I was on the ferry-boat on the 21st day of July, on the evening when the accident happened, which was a collision between the ferry-boat and a launch; I was on the ferry-boat right forward almost at the tail at the chain that crosses to keep passengers from going out, right the forward part of the boat; I said the chain; a complex arrangement, one of those closing up and stretching out; it was a gate; an "X" gate; I had a friend with me at the time named Fred. Hughes, we were both sitting down in the front part of the boat, right opposite the cabin, right next to the gate; I had my attention attracted to the steam-launch before I got off my seat by its whistle; then the steamboat did not answer the whistle
95 and I did not bother getting up; then I heard the whistling.

Objected to.

I heard the whistle again, I jumped up knowing there was something ahead and as soon as I jumped up I looked forward and seen the steam-launch; the steam-launch was at that time distant from the ferry-boat I should think about a boat and a half length, a ferry-boat and a half length; the ferry-boat in my judgment is about 150 or 170 feet long, I should think perhaps a little longer; once and a half the length of the ferry-boat was the distance from the ferry-boat to the launch; the second time the whistle blew.

By the COURT:

At that time the ferry-boat was pointed bow right opposite between Roosevelt and Grand street, as near as I could get it.

By Mr. PATTERSON:

Pointed to a point between the ferry, if you want it that way; I had to look that way to see the launch; if I had been looking forward I would have looked right that way; I should think that is the way; the launch at this time was right in the middle of the Twenty-third Street slip, I should think, about in the center of it;

from the time that I saw the launch about the middle of the Twenty-third Street slip I don't think it made any forward motion up to the time of the collision; I don't think so, at least I could not see any, could not notice any; I know it was bobbing up and down, but don't know whether it was going forward or not; the Grand Street slip I speak of is between the Roosevelt and Twenty-third, they have two slips I think to Grand next to the Twenty-third Street slip; at any rate these Grand Street slips
96 and Roosevelt slip are farther down the river towards Governor's island than the Twenty-third Street slip; when the boat was about a boat and a half length away from the launch, it was I should think pointed right between the two slips, Roosevelt and Grand, as far as I could see; I don't know very well how the situation was afterwards previous to this collision; I kept my eye on the launch more than I did on the course of the ferry-boat; to tell the truth to the best of my knowledge as soon as the ferry-boat get well into the current or far enough around she veered around, and made for the Twenty-third Street slip, as far as I could see; at the time the ferry-boat veered around and made for the Twenty-third Street slip, I guess she must have been a boat and a half length; very near, from the launch, was almost the same time as far as I could see near about that; she made the veer toward the port side of the boat I think; I mean the boat went to the left; went to the Twenty-third Street ferry; while the ferry-boat was traversing this space and making this veer I speak of I could see two parties only on the launch at that time being quite a distance away, 200 or 300 yards away, or feet away, whatever it was; I could see two people; I think the young fellow McCann had his hands up like that and he shouts out, "For God's sake where are you going" and I said to the old gentlemen in front, "I don't know what he is doing;" I don't think the ferry-boat slackened up as far as I could observe before striking the launch; I don't think it did, sir, till as it were, "one, two" might be as close as that, might be two beats; might be two seconds; of course simultaneously, I should say, with the striking of the launch; the launch when hit by the ferry-boat went under the guard-rail or whatever you call it, the side; the ferry-boat then went right into the
97 slip; the light on this transaction was not daylight I don't think, nor it was not dark; light enough for me to see the boat, I could see anyhow.

Cross-examination by defendant's counsel:

I don't know whether there were lights on the ferry-boat, I think so; I think there were lights on the other boats on the river; I say that when I saw this boat first she was about the length of the ferry-boat and a half away; I estimate the length of the ferry-boat at 150 or 170 feet, and I say that at that time the ferry-boat was about veering about, turning; when I saw her first she was about in the act of turning; I would not like to say her bow was swinging around toward Brooklyn; she goes sideways down there a little bit

once in a while with the tide; one time it was her bow was pointed between Grand and Roosevelt Street ferries; she was turning and veered immediately so that her bow pointed towards the Twenty-third Street ferry; so she was very near a boat and a half length away when she pointed for the Twenty-third Street slip; I understand your question, and my answer; a boat and a half length would be something over 200 feet about the time she pointed toward the Twenty-third Street ferry; I am not giving it to you in inches about 200 feet; after she got her head pointed toward Twenty-third Street ferry she came right straight along for the Twenty-third Street slip; I seen the launch both before and after, when the boat was turning; I said I seen the launch over the port side; I was looking over the side at the Twenty-third Street ferry; when the boat turned and I was sitting on this seat as I have described it, I heard the whistles, and then saw the launch; when I got up
98 after hearing the whistle the ferry-boat must have been somewhere near about the same to Twenty-third Street slip; 150 or 100 feet, 150 feet; that is the best judgment I can form; might have been 100 or 200 feet; that is as near as I can get to it; I did not say when I saw them first that I saw a man standing up, who said: "For God's sake, where are you going?" half a minute, something like that, after I first saw the launch; it came very close, one after the other; I guess I was three-fourths of the ferry-boat's length from the boat when I heard the man speak; I could not give the regular distance in feet; close enough to hear him speak plainly, and see and recognize him; he said: "For God's sake, where are you going to?" shouted to the pilot; I guess he shouted at the top of his voice; "For God's sake, what are you going to do?" I cannot tell how loud it was; it was louder than you are talking, it was louder anyhow; at that time the ferry-boat was heading right into the slip; seventy feet from the launch, half a boat length or three-quarters of a boat's length; the launch was not still whistling; it still kept now and then; it was not continuous; if any one said that the ferry-boat and the launch came together within one or two seconds after the whistle ceased, that would not change my memory on the subject; I don't think it would; I would say they came together pretty soon after, within a second or two after the whistling ceased, after the third or fourth time it whistled; they came together something like a second or two after the final stopping of the whistles; they were right on one another; the man I call McCann was standing when he held up his arms and made this exclamation in the middle of the boat, I think in the centre; I could see the smokestack; I could not see the engine; I think he was standing forward of the smokestack; he held his hands up; he was holding
99 his hands up about two seconds before the boat struck; I don't know whether during these two seconds of time that he held his hands up he could have been using either hand for operating the whistle; the whistle was not continuous; perhaps it was not till after the whistling finally ceased that McCann held up his hands; I am not positive that it was McCann; I

think it was McCann shouted, and he held up his hands; I think I said that; I said one of the two in front held up his hands; I am telling you something that I had ocular demonstration of, that I saw; I saw somebody holding up his hands; that was the man who stood close to the smokestack; you understand me to say that my attention after I saw the launch was attracted more particularly to the launch than to the movement of the ferry-boat; I thought at that time there was danger; that was the reason I looked so closely; my eyes were riveted on the small boat because I apprehended an accident; you could see where the steamboat was without looking on it; my attention was given to the small boat; my ears were always opened; one faculty helps the other, I don't think it directs it; I am able to say whether this ferry-boat stopped her wheels or not, that I could tell by the motion of the boat; I could tell whether there was any bell rung on board the ferry-boat; there was a bell rung; the boat when the bell was rung was almost on top of the launch; perhaps twenty feet away; I did not hear the bell on the ferry rung more than once; I do not know whether it rang more than once; I don't believe the ferry-boat backed water; I cannot tell whether the ferry-boat backed water or not before she struck the launch; as the ferry-boat approached this launch my apprehensions being originally excited they were not allayed any as the danger seemed to increase, so that as the danger increased I guess I was looking at the time earnestly; I thought they were all going to get run over, and still I am able to say that the bell on the ferry-boat did not ring more than once, and that the ferry-boat did not back her wheels; I was sitting right where the bell is, and I could hear it; of course it may have rung more, but I did not hear it; that does not apply to the wheels; I am almost positive that the boat did not back water; well, I don't know, except I seen it with my own eyes I would not like to say I was positive; I have had the rheumatism; I have been troubled with rheumatism for about—this is my fifth attack in about ten years; I was not troubled with it at the time I was on the ferry-boat; not in the summer time, only in the winter time I catch it as a rule; I was not troubled with it then at all; not the slightest; there were lights in the ferry slips; I did not see if it was there any electric lights in the ferry slips that threw its rays through the slip right out in the water; I did not see the reflection of the light on the water; I know the gas was lit, but would not say as regards the electric light; I don't think that the artificial light reflected upon the water and through the slip; I would not answer the question; I know what you mean by the rack, the side affairs; this little boat was to the nearest rack at the time I saw it, I guess about the middle; about the middle of the slip; about fifty feet at the widest, I suppose, around there; these racks were above the water, above high water as it was at that time, I suppose about twelve feet; I don't think any shadow was cast by these racks on the water in the slip; I did not notice; since then I have talked with my companion that was on the part of the boat with me, that is all; I did not notice any persons in the boat or person on the skiff;

complete strangers to me; I don't know how often I
101 have talked about it since; only just as we got together; I had considerable sympathy for the people in the boat; it is my nature to be sympathetic, but that is not the real point; at the time that happened I did not know who it was or what it was; I am living now at No. 111 West Thirty-ninth street; I do not know Mrs. MacMahon; I have met her once only; I think it was in her own house, just once; I think it was at the request of my friend Hughes I went there, the man who was with me on board the boat; he knocks around there and knows the people more than I do; the ferry-boat struck this boat violently, pretty much so; I did not see what part of the ferry-boat struck this boat; I did not feel any concussion; not on the ferry-boat; I saw the little boat after the alleged collision; saw it in the slip; she was still floating; I did not look to see whether there was water in her; there may have been and may not; I did not notice whether there was any water in her; I did not look, for I had enough to do; I saw the smoke-stack on this boat when I saw her first; I supposed it was a steam-launch; she was stopped, as far as my eyes could see it; I saw her moving; but still I saw that it was a steam vessel, and in this place where the ferry-boat was going; I never saw a steam vessel or ste-m craft of any kind stop in front of a ferry-boat going into a slip, that I can now recall; I don't think it.

Redirect by Mr. PATTERSON:

When the ferry-boat was pointed to this place which I say was between the Roosevelt and Grand Street slips was off the port bow of the ferry-boat.

Q. After this you say the ferry-boat veered; how did she make that veer, gradually or suddenly?

A. She turned very quickly; she had to do that around the ferry there; to the port side.

102 By DEFENDANT'S COUNSEL:

Then she was 200 feet away.

By Mr. PATTERSON:

I am sure; she was going quickly when she made that veer.

FREDERICK P. HUGHES, being called as a witness on behalf of the plaintiff and duly sworn, testified as follows:

Direct examination by Mr. PATTERSON:

I live at 363 South Fourth street, Williamsburg; I was with Mr. Graham, the last witness, on the evening of the 21st of July, 1895; I was with him that day on business in New York; I came back by way of the Twenty-third Street boat; I recollect having my attention drawn to a launch at some time during the passage of the ferry-boat; my attention was attracted to the launch by the whistling; I heard the whistling of the launch; I did not look at the

first whistle; I got up when there were a volley of whistles; then I saw the launch; it was 150 or 200 feet away from the ferry-boat then; the point on the Brooklyn shore to which the ferry-boat pointed when I first got up was towards the Grand Street slip; at that time the ferry-boat was turning; the ferry-boat was pointed to the Grand Street slip when I first got up; before striking the launch she seemed to keep that way for a little while; then she turned around; I knew she was going into the Twenty-third Street ferry, of course; in my judgment she was about sixty feet from the launch when she made the turn I speak of to go to the Twenty-third Street slip; that turn was made suddenly; the turn was made to the left; after the ferry-boat made this veer to the left she was pointed running right into the launch; the launch was
103 when I first saw it with reference to the Twenty-third Street slip, seemed to be about the middle of the slip, I should think; from the time I saw the launch I did not notice whether it was moving, except going up and down; it was not moving forward at all; it did not seem so to me; I did not notice any slackening of this boat; after the launch was struck most of the passengers that were in front got over the rail; the ferry-boat, after striking the launch, moved right into the slip; the launch moved right ahead of her; she pressed her right ahead of her.

Cross-examination by defendant's counsel:

I saw men belonging to the ferry-boat pushing the launch ahead with poles, ahead of the ferry-boat; one of the deck hands came with a pole; I believe I saw persons belonging, or apparently belonging, to the ferry-boat, pushing the steam-launch into the dock from the deck of the ferry-boat; somebody pushed it along with the pole so as to keep it free from the front of the ferry-boat; I live at No. 393 South Fourth street; I lived over there then; I lived in South Fourth street, Brooklyn; I had been to New York and was returning home; the last witness was with me; he spoke to me first and said there was danger ahead; that was what he said; it was beginning to cloud up a little; I noticed it begin to cloud up; a little while before the accident occurred, about a minute or a few minutes a minute or two after I heard the whistling then I heard Mr. Graham say that there was danger ahead; I remember these things distinctly; I did not give any attention to the clouding up at all when I noticed it first off; it did not seem to me to grow dark quite suddenly; I said that this boat when she was heading towards the Brooklyn side and where the Grand Street slip was that she
104 was then in the act of turning; when she ceased turning she kept on towards Grant Street slip for a little while; I told you that this boat was turning; her head was pointed when she stopped turning, towards the Grand Street slip; she did not turn any more than that; she turned towards the Twenty-third Street slip, after I first noticed her; she turned with her head pointed toward the Twenty-third Street slip and then went on for a few seconds, she kept straight on towards the Grand Street slip; a few

seconds; might have been twenty or thirty seconds; it would be more than ten seconds I should say between twenty and thirty seconds; all done very quickly; my attention was given to the movement of the steamboat more than the launch ahead when I was looking; I was watching the launch and watching how the ferry-boat would act; I heard the bell on the ferry-boat ring once; I will say that it was not rung twice; I will say that it was not rung three times; I am positive that it was rung only once; I would not be positive whether the wheels of the ferry-boat ceased before reaching the launch, I could not say; I don't think they did; I would not be positive over it; I noticed that this boat that was ahead was a steam-launch; I saw the smokestack; she was right about the middle of the Twenty-third Street slip, about the mouth of the Twenty-third — slip; only she was clear of the long pier; outside of the long pier; I should say about ten feet out from the long pier; I saw the launch after this in the slip; I was not allowed to stop, I was driven out in the street; driven out; the deck hands forced everybody outside, all passengers; I did not want to stay there; I was first to step off the boat; I heard shouting; I was outside the rail all the time; I got over to help some of the men aboard.

105 Q. How quick after you saw this boat turning and thought there was danger before the people on the launch got onto the ferry-boat; give it to me in minutes and seconds?

A. They whistled two or three times; from the time I first saw the launch and somebody said there was danger ahead, from that time till the men on the launch got on the ferry-boat was about thirty seconds, I should think; twenty or maybe thirty; I did not talk with anybody about this matter since then, except once and a while talking with Mr. Graham this last week; I did not know Mrs. MacMahon at that time; I made her acquaintance subsequently; the last witness and I both went together; I feel interested in this matter; might be a little sympathy, that is all; sympathy with the lady; there was, that is the fact.

Redirect by Mr. PATTERSON:

Never met the parties before the case; never saw any of the parties; there was no boat in the Grand Street slip; it was open empty.

By DEFENDANT'S COUNSEL:

I had two or three glasses of beer to drink that afternoon; I am in the habit of drinking beer; I took a couple of glasses of beer that afternoon; it was a very hot day; first drink that day; about an hour before we got aboard the ferry-boat; I did not drink any before that during the day; I drank then on Third avenue; I could not tell the name of it; a strange place; had been in it once before; a month before; on Sunday I was at a meeting; the meeting was not held in this place where I drank; Mr. Graham and I went in to get a glass of beer before we went home; I did not drink any more after that; not till I got on the ferry-boat; I said during

al] day I had two or three glasses of beer on Sunday; well,
106 leave it the afternoon; I don't think I said that afternoon; I did not drink any more after that, and that was the first place I drank. When I said that I drank two or three times that afternoon I mean at that time; I had about three glasses of beer altogether; I had a glass of beer with my dinner; I had a glass of beer before I started for my dinner about one o'clock, and during the time I was at my dinner I had another; in Brooklyn, where I live; in my own house; yes, sir; at my dinner; I had two glasses of beer altogether at my dinner; I sent out for the beer; then I went to New York; I went with my friend, Mr. Graham; I did not drink on my way to New York or on my way to Brooklyn after I left my house; we had to go to a meeting; we got to New York about half past two, I should say; while in New York I did not drink at any place beer or liquor of any kind, except the time I tell you that I went into the place on Third avenue; the last witness had a glass of beer with me.

KATIE J. MACMAHON, being called as a witness on her own behalf, and duly sworn, testified as follows:

Direct examination by Mr. PATTERSON:

I am the plaintiff in this case; I was thirty-one years old last March; my husband was thirty-four years old; he was married to me twelve years this month; we lived together in New York, Brooklyn and Montclair; at the time of his death, on July 21st, 1895, I had two children; their names are Oliver Robert and John Lester; both boys; eight and ten years old; my husband did not apply all his earnings to the support of his family; he had to use some in his business; well, he used about forty dollars a month in his business sometimes; forty dollars a month; he was a
107 salesman; he had to bring men to dinner to get trade; in fact, what he was working for all his life was only to come this January; the balance of his earnings were applied to his family.

By the COURT:

He was in excellent health; he had never been sick at all since we have been married; he was sober and industrious; worked steadily every day; never missed a day.

No cross-examination.

Mr. PATTERSON:

I will offer in evidence a statement showing the state of the tide.

(Received subject to correction, if it should be found necessary. Marked Exhibit 2.)

Plaintiff rests.

DEFENDANT'S COUNSEL:

I move to dismiss the complaint on the ground that the plaintiff has failed to make out a cause of action.

1st. That the evidence does not show any negligence on the part of the defendant, its agents or servants, which resulted in the death of the plaintiff's intestate.

2d. That the evidence shows the death of the plaintiff's intestate was caused solely by his own negligence or by such negligence on his part as contributed thereto.

3d. That the plaintiff's intestate and his associates in the joint use, management and navigation of the boat upon the occasion in question and in the use, management and operation of the machinery thereof were culpably careless and negligent, and that the accident and death of the plaintiff's intestate were and each of them was occasioned thereby or such carelessness and negligence contributed thereto.

108 4th. That such carelessness and negligence on the part of the plaintiff's intestate and his associates or of any one of them, is legally attributable to all and each of them individually, including the plaintiff's intestate, and must be so regarded in this action, and whether such carelessness and negligence was the sole cause of such accident and death, or merely contributory thereto, the plaintiff cannot recover.

Motion denied; defendant excepts.

Defendant's counsel opens the case to the jury for the defendant.

ELIAS B. DUNN, being called as a witness on behalf of the defendant and duly sworn, testified as follows:

Direct examination by defendant's counsel:

I have charge of the U. S. Weather Bureau at No. 66 Broadway, New York city; I have been in charge of that about twelve years; I keep a record of the weather there from observation for official purposes; I don't remember Sunday, the 21st day of July, 1895, but can refer to the record. Reading from record: It became cloudy during that afternoon; was partly cloudy during the afternoon; clear in the morning; became cloudy in the afternoon; light rain began from 9.07 p. m. and continued over midnight; there was a thunder storm during that evening, during that night, only clear during the morning, then it got cloudy in the afternoon right up to the thunder storm, increased in cloudiness till the thunder storm came up; the rain began at 9.07 p. m.; there is no record which I have showing the condition of the weather between five o'clock and nine o'clock beyond the fact that it appears to have been cloudy, that is all; that record covers the day in general; I can give you at the precise

109 hour of eight o'clock p. m. or eight o'clock a. m.; I cannot give you between seven o'clock and half past seven, this cover- the record in general for twelve hours, 8 o'clock a. m. and 8 o'clock p. m.; I can give you, at that precise hour; at eight o'clock p. m. the weather was cloudy and threatening; it is not more specific

than that; the extent of the cloudiness was 10.10 clouds; sky completely clouded at eight p. m.; it started to grow cloudy in the afternoon; I cannot give its condition at 6 o'clock p. m.; nothing more specific than that; at 8 o'clock p. m. it was cloudy and threatening; the wind about that time was high wind during that evening and during the time of the thunder storm the wind reached a velocity of forty-four miles an hour at the highest during that; the extreme velocity was forty-eight miles an hour.

By the COURT:

I am speaking of 9 o'clock at night now, the height of the thunder storm.

By DEFENDANT'S COUNSEL:

That was a high wind; I would call a wind of that kind, forty-eight miles an hour, a gale; at 8 o'clock p. m. it was blowing directly from the south; the direction of the wind before the storm at 8 o'clock p. m. was southwest and west; after the thunder storm it was from the west; as to the direction of the East river, it runs north and south, or very nearly so.

Cross-examination by Mr. PATTERSON:

The certificate you have here from the Agricultural Department showing the direction and velocity of the winds from 7 to 8 o'clock, gives the height or average wind from 7 to 8 o'clock; the total wind for the hour; from 7 to 8 o'clock, six miles an hour;
110 from 8 to 9 o'clock, sixteen miles an hour; from 9 to 10 o'clock twenty-two miles an hour; so that during the hour from 7 to 8 o'clock the wind only blew six miles an hour; from 8 to 9 o'clock it blew sixteen miles an hour; that is the total number of miles it blew during that hour; I could not tell you from this record how long the high velocity lasted; the maximum wind was at 8.55, and the entire number of miles blowing was twenty-two; maximum velocity, forty-two miles an hour; the entire number of miles was twenty-two miles; maximum, forty-two; it shows what the highest velocity must have been during that period.

Redirect by defendant's counsel:

We don't figure it at the rate of miles per hour; I did say exactly how long it would be; the maximum velocity of forty-two miles for any five minutes, any five minutes in that hour; I have not any recollection of that evening so as to tell anything about the light, or any record of that.

JOHN OWEN, being called as a witness on behalf of the defendant and duly sworn, testified as follows:

Direct examination by defendant's counsel:

I live at No. 504 Graham avenue; my business is laborer in the navy yard; I remember Sunday, the 21st day of July, 1895, I had

been to New York that day; I came across on the boat that had the difficulty with this steam-launch; I cannot tell the time that boat left New York; I do not know at what time it got in Brooklyn, I could not tell; at the time I went on board at Twenty-third street the lights on board the ferry-boat were all lit, the ferry-slip lights were lit too; it was not daylight, quite dark when we got into the slip.

111 By the COURT:

On the Brooklyn side.

By DEFENDANT'S COUNSEL:

It was coming dark when we started out; I noticed it was kind of blowing up when I came down the river; I was on the front of the boat sitting by the rail; I did not see the steam-launch till I heard three whistles from it; I heard three whistles, just hardly heard them, before we met, about fifty feet from the dock when I heard the launch whistle; when I heard and looked I see the launch right by the short pier, fifty feet from the ferry-boat; I saw her plainly; the Brooklyn slip at that time was lit up; I seen her by the electric light which showed in the water up the slip; that electric light showed in the water, showed on both sides of the slip, dark on the left-hand side; she was on the left-hand side, about fifty feet from the steamboat; I could see people on board of her at that time; there were three, one at the bow, one standing by the engine and the other sitting down; I did see the funnel of the smokestack, I could tell it was a steamboat; I stood by the gate and as soon as the whistle blowed, the deck hand was standing alongside of me, and as soon as the whistle blowed the ferry-boat slacked up; before the whistle blowed the ferry-boat slacked up and the ferry-boat came in sidewise into the slip; I heard a bell on board of the ferry-boat, before the whistle blowed; I did not hear any bell on board of the ferry-boat before the whistle blew; I do not know anything whether the ferry-boat wheels were kept going or moved in another direction or anything of that kind, I think she slacked up; I am able to say that the boat slacked up; I could not say that the wheels ceased to revolve; I noticed the boat slackening up, that is all; I say that the boat came in sideways;

112 I saw her when she touched the small boat; I did see people get on board from the small boat, I helped a man on board; the right side of the bow of the ferry-boat touched the small boat (model shown witness); right about here and she hit her and drove her into the slip, and the launch went in under here, right in under there, right here, the port side, the right-hand side; I was standing right here; it was very dark at the time I saw this launch; it was not light enough to see the launch without lights; there was no light on board the launch; there was light on board the ferry-boat, in the cabin on the pilot-house; I did not notice that it was in the pilot-house; I say the dock was lit up; I did not see what became of the launch after she got in the dock, I don't know what became of the launch; the launch was not capsized or upset; I did not see

her broken in any place; I could not feel that the boat struck; after she was drawed in the slip I seen the launch tied to the ferry dock in the slip.

Cross-examination by Mr. PATTERSON:

I say it was pretty light when I got on board in New York, just getting dark; it was not daylight when I got on, just getting dark I said; there was daylight left when I got on at New York, just coming dark; I could not tell how long after sundown it was, I could not say just what time; well just coming on dark; it was just about getting dark when I seen it; I had been that day to 122d street; I went up to visit a man in the navy yard; I could not say what time I left his house; I did not have my supper before I came away; I left before supper; I could not say if I left before six o'clock, I didn't leave at five o'clock, I left at half past six, might be that time, yes; I will swear that it was half past
113 six when I left; the people did not have supper before I left; it was my intention to leave before supper, it looked like a storm and I left, I did not want to get caught in the rain; I took Second Avenue cars, the Second Avenue elevated; I don't know how long it would take to come down, it took about one-quarter of an hour to come down; when I got off the elevated railroad I went down to the ferry; I could not say I got on that ferry-boat before seven o'clock, yes, about that; that is my best recollection that I got on the boat before seven o'clock; I remained on her before she started out, about two minutes, I guess; I don't know how it could be dark when I got on, I am all mixed up; if my story is correct I must have got on this boat half an hour before the sun set, that is my recollection of it; I don't know how long it takes the boat to go over from Twenty-third street to the foot of Broadway, about twenty minutes, I guess; I did not get to the foot of Broadway before sunset, if my story is true I must; I was not looking at the sun when it went down, I know it was dark; I don't know that it takes more than fifteen minutes to come down by the elevated railroad, it is very seldom I go to New York; I am sure I have the right day, Sunday, the 21st of July; I did not take down the date, I recollect the day, because I know it was that day; I know the date because it fell on Sunday; other days have fallen on Sunday; I cannot tell how I can pick out that day, simply because it was on Sunday I could not say; I looked at the calendar that day; a calendar we have in the house, a monthly calendar; I looked at it that night when I came home to see what time the accident happened; I did not know anything about my going to be a witness; I did not look at it to qualify myself as a witness; I looked at it to
114 see what day the accident happened; I wanted to know that because I saved a man that night, and I wanted to know what day I saved him; I did not know there was a coroner's inquest in that case; I never gave my name to the company; oh! yes, I gave me name to the company; I said I did not know there was a coroner's inquest, it is true I did not know; I was never a witness on a

coroner's jury; I do not recollect when I was leaving the coroner's inquest that I spoke to Captain Baulsir, the pilot, after I had given my evidence; I don't know that when I was going over from the inquest I turned to Captain Baulsir and said, "I wouldn't have done this thing for anybody but you;" I don't know whether I did or not; I don't know whether it happened or not; I cannot recollect whether I said that or not; no recollection whatever about it; I do not deny having said it; I saw that man at the inquest.

Q. Charles McCann, didn't you say in his presence to Captain Baulsir after you had given your evidence, I wouldn't have done this thing for anybody but you?

A. No, sir; I don't remember saying anything about it; I don't remember saying anything about it; I said that I left at half past six; that I came straight down the elevated railroad and went on this boat right off; that is right; I did not stop anywhere; I had not any drink in New York or elsewhere.

By the COURT:

Any time that day.

By Mr. PATTERSON:

Q. Was there plenty of light for you to see this boat, this launch?

A. Not before I came on the slip I didn't see it; I could not have seen it if I had been looking, because I could not, it was so dark, getting dark; it was dark; I did say a moment ago that it
115 was getting dark; it was getting dark, say it was dark; I mean dark; I could not say what was the color this launch was painted; I have not any idea; I could not say it was black; I could not say; I did not see the launch; I did not take notice of it; I see her when she was brought in the ferry, but did not take notice how she was painted; I saw her after she got in the ferry slip; I think she was painted white; I was not looking at that part, I was too much excited; I knew that it was white all the time; I was not taking notice then of it; I think she was painted white; I was not thinking when I first spoke, that is my explanation; the launch when I saw it first was about fifty feet from the dock, right by the corner of the short pier, right against it, five or ten feet from the short pier; I do not know how much farther out to the centre of the river the long pier comes than the short I don't know that it is more than fifty feet; I could not say how much further out the long pier comes than the short one; the long pier comes out further, I could not say it is fifty feet further; the steamboat was inside of the long pier at the time I saw the launch, the front of the steamboat was inside of the long pier when I saw the launch, it was into the short pier; the ferry-boat was not into the short pier; the ferry-boat came around inside of the long pier; the front of the ferry-boat was not inside of the long pier when I saw the launch, when I first saw the launch; the ferry-boat when I first saw the launch was fifty feet from the long pier; the launch must not have been still farther away if it was at the short pier; the short pier is farther away, farther in toward the land; if the ferry-boat was fifty

feet from the long pier I don't know how it is possible that it could be fifty feet from the short pier; I never measured it, I could
116 not give it; I saw the launch while we were fifty feet from the long pier; I could see there 400 or 500 feet on that river and if I had been looking at that launch I could have seen it 400 or 500 feet away, it was light enough for that; I saw the Blackbird when they passed her, I read the name on the Blackbird 400 or 500 feet away.

Redirect by defendant's counsel:

I did help some of these people off the launch onto the ferry-boat; it was Mr. McCann that I helped onto the ferry-boat: I saw McCann afterwards; I am making no mistake about the man I helped off the boat, that was Mr. McCann; he was on the launch and I was on the ferry-boat.

JOHN V. BAULSIR, being called as a witness on behalf of the defendant, duly sworn, testified as follows:

Direct examination by def't's counsel:

I live at No. 551 Kosciusko street; I am a steamboat pilot in the employ of the Brooklyn and New York Ferry Co.; I have been in the employ of that company about four years and a half; before that I worked then for the Union Ferry Co.; I have been in the employ of that company, the Union Ferry Co., about thirty-six years; the boats were run during that period from the foot of Twenty-third street, New York, to Broadway, Brooklyn; the Union Ferry Co. from Fulton street, Brooklyn, to Fulton street, New York; about thirty-six years; while I was in the employment of the Brooklyn and New York Ferry Co. I had charge of different boats, most of the time the Fulton; I had been pilot on the East river altogether about forty-two years; I am acquainted with the character of the tides in the East river; the tides present difficulty with regard to the passage of ferry-boats at times; generally the tide sets in on the Brooklyn side; some-
117 times half way into the slip; at other times it sets clear past the slip; there is one part of the river more subject to that, or more difficult to cross than another; that part is at the foot of Broadway, Brooklyn, to any of those slips or different ones on the Brooklyn side; from there to Grand street, New York; Twenty-third street is bad on the Brooklyn side, but very good on the New York side; with regard to the tide, it is more difficult in coming in upon Brooklyn side at about the strength of flood tide, which is after it has run three hours; it is more difficult to leave the Brooklyn shore with the tide on the flood than to come in, most difficult to come in; there is reason why it is difficult to take the Twenty-third Street boat in coming from Twenty-third street; that does not present any more difficulty than ordinary boats crossing direct across; I had charge on the 21st of July last, of the boat New York, she was running on the Twenty-third Street route; I

have been in charge of that boat about a year and three months; the New York is 185 feet long, I don't know the full width of her, I should think she is sixty-five feet wide; that boat is built like ordinary ferry-boats, hull covered with a deck something like that (model); I see what you present to me now; the deck in the case of the New York ferry-boat was supported by braces as upon this model; I can't tell about how far the deck of the New York extended over the hull upon either side, I don't think it is over eight feet, about eight feet; there is one rudder on each end of these boats; we use one in going out and the other in coming in; you run one end of the boat into the slip, that is the bow in coming in, going out we use the outer end of the boat as the bow; the rudder on that
118 end when using it as the bow is fastened by an iron pin that goes through the yoke; the pin goes right down and holds it in; when we run from the other end of the boat that pin is taken out and put in the other rudder to make the stem; I remember Sunday, the 21st of July, 1895, when this alleged collision took place; our ferry-boats leave the ferry a little behind time; there are specified times for the boats to leave; that night my boat left New York on the trip where this accident occurred at ten minutes to eight; I know that by looking at my watch; I had ought to have left at twelve minutes of eight, but we were two minutes late; twelve minutes to eight; the delay was occasioned by the extra crowd of passengers to get aboard, and they could not shut the gate off from the room; when the boat started from Twenty-third street I was in the forward pilot-house; George Schultz, my wheelman, was with me; I said that I looked at my watch; on the New York side it was all lit up; the lights were all lit on the dock and around the premises; on the ferry-boat in New York she was lit up; this was ten minutes to eight; when I got outside the slip I found the tide running pretty strong, flood tide; when we got out of the dock we started from Twenty-third street at ten minutes to eight; followed the New York shore down till we got about Houston street, then I struck across till about the middle of the river, and followed that course till very nearly opposite the slip; then we seen an excursion boat that came up and blew me one whistle, which indicated her intention of going to the port side of me—that was the Brooklyn side of me—yes, sir; I answered his signal, sheered a little to port and stopped; we were detained, I suppose, three minutes before we got her going again; then I shaped my boat for
119 the slip or a little below the slip on the flood tide; I said we were delayed about three minutes, our boat was not under way during that three minutes, the engine was stopped; the effect of the tide on our boat during that three minutes would kill her headway, it did stop her headway; the tide was against us; I didn't know what barge or steamer or tow it was at the time but learned afterwards it was the steamer Blackbird; we was within twenty-five yards of her, of the Blackbird, after she passed; I didn't go within fifty feet of her; at the time when I turned I shaped my course for the slip below the house; I went around the Blackbird; I was a little above the Twenty-third Street slip and about shaping

for the Broadway Ferry slip; I mean by being above, above that slip; I say above I mean up towards Twenty-third street; I had not got down quite opposite the Twenty-third Street slip on the Brooklyn side yet, I shaped my boat in this position, pointing towards Brooklyn; as it neared the slip, within about 200 feet, I slowed down, one bell to slow, half speed; that was the proper course for me to take at that time, our regular course to go into that slip; I did not see anything to render any other course necessary; I let her run fifteen seconds after shutting off 200 feet away, and then saw an object come under the gaslight fifty feet from the bridge; I rang two bells right there; I shut off speed about 200 feet away, that is the usual point to shut off; I did not do it because I saw anything in the way; I was pointing then for the long pier and the rack, our regular Twenty-third Street slip; I shut off steam at that place, up to that point; I don't think the boat was running over six miles an hour; it was not necessary to avoid any particular rate of speed during that period; I estimated the speed as being necessary to take her to the place I wanted to turn in; I rang the bell 200 feet off the end of the slip; that is the usual
120 distance; the velocity of the boat does not from that point usually carry the boat into the slip, we shut off, one bell 200 feet off; the stop is within seventy-five feet of the slip.

By the COURT:

From that point the momentum would carry the boat into the slip without putting on more power.

By DEFENDANT'S COUNSEL:

When the steam is shut off that stops the revolution of the wheels, the boat will run then about seventy-five feet from the end of the dock from the momentum she had been going before; then I rang two bells and backed after I had seen this little object; I rung the bell 200 feet off; upon this occasion I rang two bells to back, after I had rung the bell and stopped the engine; that was when I had got seventy feet further along, seventy or seventy-five feet; I rang the bell to back the boat because I saw this small object drifting apast the slip, when it got right in front of the electric light that hangs over the bridge I see that it was a boat, I rang these two bells quick, directly after ringing that one to stop, and by ringing quick they backed her quick; when I rang the first bell the wheel did not stop, went at half speed; the meaning of that first bell was to shut off, the boat ran then at half speed; when I rang seventy feet further off to reverse she backed; when a boat is running at half speed and the wheels are suddenly reversed, after that, before the revolution had an effect upon her we would go clean into the slip by it; the revolution would not keep her from going into the slip; the effect of the revolution of the wheels would be to stop her going ahead, she runs seventy-five feet, as she did on this occasion; I rang the bell to reverse; the wheels would be reversed about twenty-five
121 seconds before they would stop the way of the boat, it would

take us about the position we were going in against the tide there, it would take about twenty-five seconds.

By the COURT:

She would go at least fifty feet, oh, from the time I backed; oh, I was about fifty feet off the slip when we commenced to back, and she went seventy-five feet in so that would be about 125 feet.

By DEF'T'S COUNSEL:

Q. Was there any other way of stopping the boat except as you did on that occasion?

A. Yes, sir.

By the COURT:

I mean to say that there is no other way of stopping these boats within a distance of 125 feet, or a shorter distance than that; that is about the best we can do.

By DEF'T'S COUNSEL:

When I have room I can steer clear of an object if I cannot stop my boat, but running into the dock we have to have headway enough for them to get in.

Q. Take your boat on half speed, take her with the engines stopped, running along within seventy-five feet, and reverse your engine, how much farther will the boat go ahead notwithstanding the reversing of the engine before she stops?

A. She would go ahead clean up to the bridge, not with the engines reversed; when my boat was under about half speed after I rang the bell to stop the wheels I rang two bells to reverse the engine, that would operate to reverse the wheels also; assuming that the wheels would be reversed and backing water going towards the dock it would take about twenty-five seconds to stop the boat
122 with the wheels working in the opposite direction from the time they commenced, she would go about 150 feet; the tide would have the effect of stopping the boat, help to stop her.

By the COURT:

My figuring is based upon the then tide at that place.

By DEFENDANT'S COUNSEL:

Based on my experience for the time I have stated.

Q. Why did you give the signal to reverse the engine?

A. I told you I saw this here little object floating past; previous to that I had heard three whistles, but could not see where it was; I heard the three whistles after ringing my first bell; I heard the three whistles after I had given the first bell; I looked then to see where the whistling was, I could see nothing, I had gone seventy-five feet more before I saw anything; I had gone, I guess, all of 125 feet from the time I rang to shut off till I rang the bell to stop; I was about fifty feet from this boat when I gave the order to reverse.

Q. Why did you give the order to stop her the second time?

A. It is the usual place to stop ; I saw her just as I had stopped my boat; I see this object, but did not know what it was going past the slip; because the electric light shown on it; the object was in motion, about fifty feet away from me; I could not tell whether it was a steam-yacht, did not see any smokestack or anything; the condition of the natural light at that time was very dark night, at that time, my recollection is distinct about that; when I saw this boat first I could not tell what her color was; the launch was just merely drifting with the tide, stern foremost; I gave the order to reverse the engine immediately, as soon as I saw this object
123 passing me; at that time it looked as if she was just drifting; I could not tell that she was a steam-yacht; I tried to clear the boat, besides directing my wheels to be reversed; I shoved my wheel hard-a-port and it sheered her about fifteen feet toward the lower rack; that turned the ferry-boat to starboard; starboard was the lower side, that is the side down river towards Governor's island, the starboard side; I put my wheel a-port and that threw the head of my boat towards the starboard side; she shifted it so that she came in on my port guard; I was about fifteen feet inside of the end of the rack before I touched the launch; I jammed my helm hard up so that my boat had little helm to turn her; by getting my helm as I did get it, it would not have made any difference if the rack had not been in the way; I don't think it could have made any difference; that was my best judgment at the time of the best way to avert it; my wheels were going back then, I am sure about that; my boat when she touched the small boat was going very slow; she was not going at the rate of half a mile an hour when she came side and side together with the steam-launch; I could see whether or not the revolution of the wheels was causing any back water; the back water from the wheels brought the launch out from under the guards into the slip; I backed her until the launch came out and then I stopped; I did not change the wheels at all after I directed her to be backed first, no sir; if I had put my helm the other way I think it would have cut the launch in two; I cannot think of any other way, in my judgment as a pilot, with my experience, by which I could have avoided that boat, than the course I took upon that occasion; I saw in the launch when she was within fifteen feet of me, I saw two men standing in the launch; as soon as the boat came up to the launch these two men
124 jumped for our ferry-boat; if that boat had been going stem on half speed or quarter speed and struck that launch, stem on, squarely it would have broken it all to pieces; as it was the awning over the back part of the launch about up the stanchions after she came out from under the guard I found that was bent over towards the port side (model shown); like these pins stuck here; I found they were bent over towards the port side of the launch; the smokestack was gone, I seen nothing else; after she got out from under us I ordered my men to get their boat-hooks and shove her in the slip; they done so; I followed her in slow; she was about fifteen feet inside of the end of the long rack, when my boat touched her; the short rack is about seventy-five feet shorter than

the long rack; she was very near the center of the slip when we came together; my idea when I saw this boat, as to whether she would pass along before I got there or not was, I see it was an object, and it looked very much like a boat, and my idea was to try to clear it if I possibly could; I did intend to do that without regard to what they did, I did not rely on that, I relied on myself to do the best I could.

There is no way now that suggests itself to me by which I could have done anything beside what I did do so to avoid the accident; I testified before the coroner; I do not know this man, the last witness called on the stand here; I never saw him till here last Thursday or Friday; I was introduced to him; I saw the witness that was on the stand—Mr. Owen; I did not know him before; I saw him first the day we sat in this court-room; I did not see him at the coroner's inquest; no, sir; I was there.

By the COURT:

125 On the New York side they light the lights before it gets to be dark—well, five minutes before sunset—without regard to the sort of day it is, so as to have the lights going ahead of time—an electric light; passing boats are lit up, according to law, from sunset till sunrise.

By DEFENDANT'S COUNSEL:

I have particular recollection of this night beyond the accident itself; the condition of the sky along after six o'clock was cloudy, and the wind commenced to breeze up from the south; it got dark that night earlier than usual; it got dark that night at half past eight; my boat got to the Brooklyn shore that night ten minutes past eight; the condition of the light was affected by the clouds at that time; the storm broke after that, along about nine o'clock.

By the COURT:

At this place in the river there are a great many boats passing up and down the river; it frequently happens that they pass in our front as we come into our slips, so we have to keep a constant lookout and guard against that; my eyesight is pretty good; my age is sixty-one; I can see all over; I can see farther than some young men at night.

Q. Can you? Let me test you: look at that paper on the wall.
A. Yes, sir.
Q. Can you read that?
A. No, sir.
Q. Any part of it?
A. No, sir.
Q. That lower one off here; can you read any part of that?
A. No, sir.
Q. Can you tell any letter of it?
A. No, sir.
Q. Look at the clock (calendar clock), can you read anything it says there?

A. No, sir.
Q. Can you tell the time?
A. Yes, sir.
Q. Can you read either of those words below (day and month)?
A. No, sir, not from here.
126 Q. Or tell the figures?
A. No, sir.

By Mr. PATTERSON:

Q. What time is it by the clock?
A. It is a quarter past three.

By the COURT:

Q. Is that as near as you can tell?
A. A minute or two difference.
Q. How many minutes difference?
A. Two.

By Mr. PATTERSON:

Q. Which way is it?
A. Past it.

By DEFENDANT'S COUNSEL:

Q. Is there any difference in your eyesight in looking at objects in the water like boats and ships, and looking at small print or close, at this time?
A. Yes, sir, considerable difference.

Cross-examination by Mr. PATTERSON:

I made a trip after ten minutes past eight that night, I did not make another trip; I got relieved that trip, I went on deck with the intention of making another trip, I did not make another trip; I think I said before the coroner "I did not see any men in the water after we backed; did not hear any one was missing till I made the next trip;" I did not mean by that to say to the coroner that after I made another trip over and back I learned that a man was missing; I meant by saying "After I made the next trip; I did not hear that any one was missing till I made the next trip," that I came down to see what was the matter and afterwards went up again with the intention of making another trip; my partner came and says, "Don't you want to go home?" I said, "Yes,"
127 and I actually forgot that I did not make that trip; when testifying before the coroner I thought I had made another trip after this accident, I fully believed that to be so when I was before the coroner, and I testified to it, that I made another trip before I learned that a man was missing; what has changed my mind since about that is my partner told me, after this mind you, after this inquest he says, "Don't you recollect I relieved you a trip ahead of time that Sunday night?" "Well," says I, "if you did I forget it;" there was considerable excitement around about that

time; I testified before the coroner that I made another trip and it was not true; the first thing I knew about it was—to change it—when my partner told me first about it afterwards; I think it was about the 10th of August, 1895, after the testimony I gave on the inquest that my partner changed my mind about this by telling me the fact; I could not tell what day I testified, I testified twice before the coroner; I do not recollect what dates; I made up my mind that I would go and rectify the mistake, then I went before the coroner and said I did not make any other trip; it is not the fact that if this accident happened on the trip before the last I made that day it would have been daylight, positive about it; suppose my first testimony had been correct and I made a trip after this trip, I do not mean to say that it would not have been daylight then; it would take thirty-six minutes to go from Twenty-third street, New York, to the foot of Broadway, my laying-up time and then go back again, I made that trip at 7.10. it takes thirty-six minutes for the round trip, to leave Twenty-third street, N. Y., and go back again to Twenty-third street; it is the fact that if I left at 7.50 that thirty-six minutes before that time would be 7.14, but there was a delay of this Blackbird, which made the trip
128 longer than it had ought to be; that delay was after 7.50; the time I must have left New York on the trip previous to 7.50 was thirty-six minutes ahead of that, that would be 7.14, fourteen from fifty leaves thirty-six, then I would not have left on the trip before that at 7.14, it would be about half past; we were behind time that night; I do not mean to say that my understanding of the thing is that thirty-six minutes before 7.50 is half past seven, it would be about twenty-two; 7.26 is after dark that night, at 7.26 the sun was down; I guess I left New York on the previous trip at 7.12, that was not my time, the last trip I made was 7.50; I say we left on that trip at 7.12, because we run there a mixed trip.

By the COURT:

12, 24, 36, 48; it goes on that way, you know; I left the Brooklyn side on the previous trip twenty-four minutes past seven.

By Mr. PATTERSON:

The New York trip was shown me, I cannot hardly think of the schedule, but I looked at the time and we left there at 7.50; the trip previous I looked it up; I cannot answer you because we were behind time, we could not do the round trip in less than thirty-six minutes, that is the round trip.

By the COURT:

There were delays.

By Mr. PATTERSON:

I think it must have been 7.12 when I left on the previous trip, then I would get over to Brooklyn before 7.30; that was not the trip that I thought this accident occurred or when I testified first before the coroner, that was the next to the last trip I made that

night; I testified before the coroner that the accident occurred on the next to the last trip I made that night, I think
129 I corrected my testimony before the coroner on the 9th of August.

By the COURT:

I cannot say how many days between the time I gave my testimony and its correction; this occurred the 21st of July, and it was the 9th of August that I corrected the statement.

By Mr. PATTERSON:

I testified on two occasions that it was next to my last trip, and then came on the third occasion, and said it was my last trip; when I testified on those two occasions I believed that I was telling the truth; I can explain to the jury how I could have made such a mistake as this on two occasions in giving my sworn testimony before the coroner; after I had found I had made a mistake I went like a man and made the correction; I did not testify that it was on my next trip back that I learned that there was a man overboard; I believe I did say to the coroner that it was on my next trip coming back to Brooklyn that I learned a man had been lost, that it was on that trip; that was not true, but I went and rectified it; I do not recollect Mr. Graham being brought before me on the inquest, up to within ten or fifteen feet of me, and being asked if I recognized him; I don't recall that I said when he was brought there that I could not see him well; in fact I never knew there was a man by the name of Graham there; if I had had light enough to see this boat 200 feet away I would not have run it down; I had plenty of boat room to navigate the boat in 200 feet; if I knew that it was 200 feet away I could easily navigate the boat and not
130 run it down; I say that after hearing the whistles my boat went 125 feet before I saw the launch, then I saw the launch fifty feet away; consequently after I heard the whistles blown my boat must have gone 175 feet; I will say that after I heard the whistles blowing my boat did not go 200 feet; I had shut off fifteen seconds previous; when I speak of shutting off, I mean going at half speed; we were 200 feet from the end of the dock, when I say we shut off; at that time our boat was headed to the pier next below us, about 200 feet, below the end of the pier, on a point, sheering, our boat was headed for a point 200 feet downstream from the long pier of the Twenty-third Street dock; I said this before the coroner, "Before I heard the whistle I had given signal for half speed;" I said this, "When about 200 feet from the slip, gave signal for half speed and always when flood tide; in flood tide would enter slip against tide;" "ferry-boat was headed toward navy yard when I gave signal;" "or make it a southeast course, make an allowance in this case for tide to carry us up;" when I was 200 feet off the slip then I was headed toward the navy yard, when I first signalled to reduce to half speed, if I had kept that course and kept my speed up I never would have struck this launch, gone past the dock; certainly I made a turn from the time I was 200 feet away from

our dock, made a turn to port before I struck the launch, had to do it, and turned gradually in that 200 feet; in the space of 200 feet I could turn gradually from directing myself to the navy yard to directing my steamer to the Twenty-third Street pier; you don't go in straight; I could not make any while headed toward the navy yard; could not enter the slip; could not enter the slip on that course; I have to veer to the left, sheer to port; I think about four points of the compass should go to port as you
131 come in; counting yourself 200 feet away, headed for the navy yard; there are sixty-two points in the compass; we don't go in straight then; go in still headed somewhat to the south; I have not got to bring the stern of our boat pretty well up against the tide as we are going in there; the tide has a tendency after the head gets into the slip and the stern of the boat is out in the tide to turn the tail of it around; we have not got to counteract that in some way; I did not testify in a case tried here in a city court where an old woman's leg got broken, on the sailing rules, the rules of navigation; I am not posted in anything except the river; I know the rules of river navigation; suppose boats are going to cross the bow, the proper course is to keep to port.

By the COURT:

It is my place if she is a-port of me for me to keep away, astern; they indicate to me by whistles, one means port, two whistles to go to starboard; I make the same answers, then it signals me to go to port the same as if we were speaking to each other.

By Mr. PATTERSON:

Having a vessel on my port bow I mean to say that it is my duty to go to port, that would not run right into the other vessel; it would enable us to clear one another; I know that a vessel according to the rules laid down by the United States authorities for the government of New York harbor, that a vessel which has the other vessel on her port bow is obliged to keep on her course and to keep up her course.

By the COURT:

No, sir, the other vessel is obliged to keep to the port side.

132 By Mr. PATTERSON:

To keep clear, he is obliged to keep clear of the other, that is on the course to port; the vessel on the port bow is obliged to go to port; she is obliged to keep on port to keep clear of the other one; it ain't the rule on the river that the vessel that has the other on her port bow is obliged to keep up her course and keep up her speed and not go to port, it ain't the way you do; if a vessel is on your port you go to port to clear her, because that is the proper side to clear her astern of her, the vessel on the starboard has the right of way, that is the way I understand it in the New York harbor; if you see any vessel approaching you on the port bow you wait for her to go astern of her, that is the way I understand

the rules; I did not hear the whistling when we were 175 feet away; I saw her seventy-five feet away, I believe I testified, and I was running shut off; I believe I said that after hearing the whistle I went 125 feet before I saw her, that is the fact, yes, sir; then after I saw her I went seventy-five feet before the collision; I did not hear the whistle 200 feet away; I heard the whistle just before I stopped—that was seventy-five feet away; I did say to Judge Troy and to you before, that after I heard the whistle I went 125 feet before I saw the boat, during that time we stopped and backed; we went all of seventy-five feet, but she was backing all the time, killing her headway; killing her headway but going forward a little bit; the truth is that I went 125 feet after hearing the whistle before I saw her, and seventy-five feet after I saw her makes 200 feet—that is 200 feet after I heard the whistle; I heard one whistle first and then two; I knew that was on my port quarter, but that one
133 whistle meant to go under my stern; I did not know the vessel was on my port; I did not know where the sound came from for I could not see; I heard three toots; after hearing those three toots, I did not answer those whistles; I saw nothing to answer; I did not know where it was; I could not read the Blackbird's name; I was not looking for it; I saw a boat—I did not know it was the Blackbird; I didn't want to read the name.

Q. Could you read the name on the Blackbird?

Objected to; received as to the degree of light; exception.

A. I could if it was there; there was light enough for it, the boat was all lit up; the lights on the Blackbird afforded me the opportunity to read the name on the Blackbird; it is on the paddle-box; there were lights in the Blackbird and lights in the barge towed by the Blackbird; she was all lit up; I did not notice her name; I could not see the launch with the light that was there on the river, nor the light on the Glen Island pier, that is 500 feet away; it was impossible to see from the Glen Island pier to where this launch was hit; there was not enough light for a person to see from the Glen Island pier to the place where this launch was; there was a man, if that was his name, Graham, after I had went ashore; I called him a sucker for interfering with business that did not belong to him; he was a drunken man, had been drinking, half drunk that night; I did not drink that night, I don't drink at all; at the coroner's inquest I think I drank one glass after we got down to Brooklyn; I said I don't drink; I stopped about two months ago altogether; I was advised not to touch anything on account of indigestion; it is not the fact that I was drinking at the coroner's inquest and that Judge Troy reproved me for it; Judge Troy
134 I don't think knew that I took a glass of beer; at the coroner's inquest I said that I was not a drinker, and I then went out and drank one glass of beer; I have worn glasses to read with; I never wear glasses in the pilot-house; the night was so dark I could not see a white launch the night of the accident; I saw two of the men in the boat before we got to the launch; I did not inquire whether everybody on the boat had been saved, I never inquired;

I first learned that a man was missing after I got relieved and came down; I spoke to Mr. Williamson and he said there was a man missing; on making other inquiry around they said "He is all right;" the next morning after I came down I made inquiry, said I, "Is there anything in regard to that launch?" They said, "Oh, no, he turned up all right;" this was the bridgeman down at the ferry the next morning; when I drove that boat into the slip the launch was drifting ahead of me, and two of them on my boat, I didn't know where the other was, nor they didn't; I drifted ahead just a turn at a time to prevent her going over that boat till she was laid up in the slip; we came in the long rack; the eddy makes it go so as we come in, generally have the wheel hard-a-port; I did not say that at the coroner's inquest that I did not call any man a sucker; they accused me of calling this man a most severe name ahead of this; I did not say this at the coroner's inquest: "Did not call any one a sucker;" I did call this man a sucker; I did not say this: "Did not call any one a sucker;" it was not when this man was finding fault with me for having run these people down that I called him a sucker, he was talking there and said, "Sue the company, I will be a witness for you," and he was so drunk that he couldn't stand.

135 Redirect by defendant's counsel:

I have testified twice before the coroner, twice upon one evening and testified as I have stated to Mr. Patterson; I found that I had made a mistake and went back at the next meeting and corrected it; I only testified on those two occasions; it was the same trip of the accident that I came off my boat and was relieved; I got in the slip, went down on deck and went forward, but there was such a crowd there at the time that I could not get anywhere near where the boat was or the men or anything; they were looking at this boat and men standing up around it; I came down on deck and saw the crowd, then went back to the pilot-house; then my partner came up; I had no idea of being relieved that trip because my time was next trip; he then relieved me and I went down on the bridge, that is the time I spoke to Mr. Williamson here; that accident occurred on the last trip I made; after the launch and ferry-boat came together I was in the pilot-house; after that I continued in the pilot-house a very short time; after the boat got to the bridge I came down; the boat felt the tide at that time; my presence in the pilot-house was necessary for the purpose of bring- her in; I had to stay there till she was secured to the bridge; I could not have left my post with safety; the man who was in the pilot-house with me left after I had shut off to come down on the deck and attend to his business; he was one of the deck hands; his name is George Schultz; in steering, when you put the helm a-port the vessel goes to the starboard side; and when you put the helm hard-a-port that gives her the full extent of the helm to go to the starboard side; that is all you can do to turn her; and when you put

the helm starboard the boat goes to the other side; when two
136 steam vessels meet, bows on, the course for them to take is, each one goes to port; that is the law; by going to port means going to the right; going to port you are passing each other then on the port side; the left side is the port side, and the right side is the starboard side; when two vessels meet you put helm a-port, and the boat goes to starboard; when two vessels meet head on the way the helm is put depends altogether on how the position is; if very close it is the duty of the vessel to signal which side she wants to go, and the other one invariably answers with the same signal, either to pass to the right or to the left; but without any signals it is right to go to the port side; I meant to go to the port side of the vessel, that puts the helm to port; when you put a vessel a-port she goes to starboard; she sheers to starboard but passes the other vessel on the port side, yes, sir, that is right, she goes to starboard; when these two vessels meet head on, they go to the port side; each one passes the other on the port side; that is done by putting the helm to port; suppose a vessel is on the port bow, two or three points on the port bow, then you have to pass the port or signal if you want to go to starboard; if you are going south and a vessel coming north on your port bow and the vessel going south is on the port bow of the vessel going north, so that each vessel is on the port bow of the other, suppose they are two or three points off of each other, it is necessary to alter their course; one or the other would have to alter their course; that is not affected in any way by the tide; a steam vessel has to turn out for a sailing vessel always; in this instance there was not anything I could possibly have done, in my judgment and experience, to have avoided this accident, that I did not do.

137 By Mr. PATTERSON:

When vessels crossing each other on the port bow coming into such position as to cross each other's bows, not going the same way or coming head and head, two steam vessels, it is the proper rule to pass to port; the one that has got the other on her port bow must give way; the other vessel was on our port bow here; I did not have to give way if I knew she was there; I was showing her my port light; he was not on our port bow as a matter of fact; if I knew he was on my port bow it was not my business to give way to him; his business to go under my stern and my business to keep on my course; I know that when the vessels are crossing each other's bows that way, the one on the starboard has no right to alter her course, and the one on the starboard side must look out for the one showing the port light on port side; the man on the starboard bow of the other vessel must either stop or go under her stern; both vessels would not go under each other's sterns; two steam vessels going on a point where the bows will cross keep to port both vessels, then they will clear one another, pass one another on the port side; I don't know that the rule is that the vessel that has got the other on her starboard bow must keep back, and that the vessel that has got the other on her port bow must go ahead and keep her

course and keep her steam up; I don't know of any such rule; I have two or three copies of the laws and regulations.

By DEFENDANT'S COUNSEL:

Without any regard to the rules of the road in sailing I did the best thing I could do in my judgment upon that occasion to avoid that boat: I would have done so even if it became necessary
138 to violate the rules; suppose I saw a boat, and there was some rule of the road that required me to run over the boat; I would violate that rule so as to steer clear of her; I did the best I could on that occasion.

ALFRED T. SCHULTZ, being called as a witness on behalf of the defendant and duly sworn, testified as follows:

Direct examination by def't's counsel:

I live at No. 336 East Twenty-sixth street, New York; I am a deck hand in the employ of the Brooklyn and New York Ferry Co.; I have been in the employ of the Brooklyn and New York Ferry Co. going on seven years; I know the ferry-boat New York; I was employed on board of that boat on Sunday, the 21st of July, 1895; Captain Baulsir was the pilot of that boat on that evening; I went on that boat at 11 o'clock in the forenoon; I remember the trip on which this accident is said to have taken place; the boat left the Twenty-third Street slip, New York, on that evening at ten minutes to eight; our regular time was twelve minutes to eight, and we were delayed two minutes by people coming on; I knew that we were delayed two minutes; the slip at that time was all lit up, and the boat all lit up; the sky was very cloudy; that gathered up in the middle of the afternoon; there were many people on the boat on that trip, a crowd, a couple of thousand I guess; I was up in the pilot-house on the boat on that trip; Captain Baulsir was in the pilot-house with me; I did not see this steam-launch till I came on deck; while I was in the pilot-house I did not see her; I did not continue in the pilot-house till the boat came into the slip; I left the pilot-house when the pilot gave the engineer the signal to shut off; I mean by that one bell; then I left the pilot-
139 house; the front of the pilot-house is all glass windows, all around.

By the COURT:

They have got to be open in front.

By DEFENDANT'S COUNSEL:

I left the pilot-house when that bell sounded and went down on deck; it was then dark; I did see a tow going up the river before that; I do not know what boat that was; I have heard since; that is the only one I can remember; when I came down I just got on the main deck when I heard two bells to back the boat, very quick bells, and when I got to the gate I saw Mr. Williamson on deck, he and another man; when I got down out of the pilot-

house first the people were all running around; I heard the two bells as soon as I got on deck; that meant back water; that is always done with regard to that; I know that signal was obeyed, because I know that when I got to the gates she was perfectly quiet in the water; I saw this launch when I got to the gate; the back water was drifting him ahead of her; Mr. Williamson, when I saw him, was standing on the bow of the ferry-boat; I didn't see the launch before she was struck; there were a great many people, quite a crowd there; there was much excitement there; the boat when I saw Mr. Williamson upon the deck was just in the mouth of the slip; the ferry-boat did not have any way on her at that time; I asked Mr. Williamson how he got upon this boat's bow; he said he had no trouble in getting upon her; I did go back on that boat afterwards; the boat was steered on the next trip, I believe, by Captain Longstreet; that is all I saw of Captain Baulsir that evening after the boat got in; I knew he left the pilot-house that evening, I saw him on deck; I saw him on deck ten
140 minutes after eight; the condition of the boat as to people, etc., and the launch, everything was confused there; the launch was underneath; I pushed her underneath the bridge; I did not see Captain Baulsir do anything when I saw him on deck that time; I did not see him again after that till the next day; after that we left there about twenty minutes after eight o'clock again; Captain Longstreet was the captain on that occasion; I was downstairs on that trip; I saw Captain Longstreet in the pilot-house; I did not see Captain Baulsir again till morning.

Cross-examination by Mr. PATTERSON:

The name of the captain who went out in the boat after Captain Baulsir was Captain Longstreet, no, I did not say "believe," I said Captain Longstreet; I am sure I did not say that when I first answered the question; I did note who the pilot was on the last trip, I knew him for years; I noted the trip he went out on that trip, because I see him relieve Captain Baulsir twenty minutes past eight; it takes a boat fifteen minutes to go from Twenty-third street to the foot of Broadway; we did not get in at 8.05, we got in at 8.09 I guess; she struck that launch about 8.09; I am still in the employ of the company; I did not give testimony before the coroner, "Saw other craft and always see other craft; saw the craft on this particular night; saw them by their lights; could see them without lights:" I said I always see light, yes, sir; I did say, "Could see them without lights but not a very small vessel;" there was not enough daylight to see crafts on the river without lights; you could always see craft by their lights; there was not light enough for me to see them without their lights, not unless you got close to them; you could not see them till you got close to them, not even a white launch on the river.

141 Redirect by defendant's counsel:

The color of this launch was white; I did not notice that it was very white, paint clean; the slip on the Brooklyn side was all lit

up; the vessel with the excursion boat, the tow that we met on the stream, was all lit up, the Blackbird and the barge all lit up too that she was towing; I noticed there were other ferry-boats lit up on the river also.

Recross by Mr. PATTERSON:

It is not the fact that I left the pilot-house when within fifty feet from the slip; I did say this before the coroner: "I left the pilot-house when the boat was about fifty feet from the slip," but in that same sentence I said that I left when the pilot slowed down 200 feet from the slip and got down when she was fifty feet from the slip; I didn't say this: "Heard no whistle from the launch; I left the pilot-house when the boat was about fifty feet from the slip," never said that; I did say: "Then heard the pilot give two quick bells to back water; this is my signature, I swore to this paper; I say that I did not say this that you read to me as you say there, it would be a misprint on that; it is the fact that just as soon as I got on the dock I saw people rushing around in excitement, they were rushing around before I got down there, it takes quite a while to come that 200 feet from the pilot-house; it takes me to come out the pilot-house three or four minutes.

By the COURT:

To get down from the pilot-house to the gate, to the deck, a couple of minutes.

By Mr. PATTERSON:

142 I suppose the boat went 100 feet while I was coming from the pilot-house to the deck; I think the boat only went 100 feet in two minutes; that is about it.

By DEFENDANT'S COUNSEL:

I said on the coroner's inquest that I left the pilot-house when the captain slowed her down, 200 feet from the slip, and when I got on the main deck it was about fifty feet from the slip.

GEORGE MCMULLEN, being called as a witness, on behalf of the defendant, and duly sworn, testified as follows:

Direct examination by def't's counsel:

I am a ship-joiner employed by the Brooklyn and New York Ferry Company; I have been employed by that company about seven years; I constructed this model that I have here; yes, sir, this is a model of a ferry-boat, the ferry-boat New York; constructed it on a scale; yes, sir, one-quarter I think it was, it is so long since I made it I have forgot (looking at model); that is right, sir, scale one-quarter of an inch to one foot; that is a correct model of as much of the boat as it shows six feet three or four inches, the deck and hull, about as near as you can get at it, yes, sir; that is the water line there, as it sits now it is on the water line; I also con-

structed this model of a launch (model shown); the scale upon which that was constructed is one-quarter of an inch to a foot, the same scale, of course (model shown); that is a smaller scale, that is another scale, the small one; they are both on the same scale constructed for the purpose of showing the proportions, the difference in size between the two proportions; I drew this diagram (plan shown); it shows the slips, the Twenty-third Street slip, and here is where we lay up there three boats at night; this model
143 and plan have the same relation; these oblong figures here intended to indicate boats, the boats laid up at night, that represents each boat on the same scale to show the difference; the idea of having this boat indicated diagonally is because she will interfere with the boat coming in; the boats on this side of the slip going in bow on to the shore, and this side the boat is kept in diagonally so as not to interfere with boats coming into the slip, a shorter boat; this indicates the distance from the river yard to the Twenty-third Street slip as 225 feet.

Offered in evidence and marked Exhibit A.

The diagram I have in my hand now is a diagram of the ferry slips, the other side of that; these indicate the slips above; the upper one Roosevelt street, the farthest down the river; the next slip is Roosevelt; the next slip is Roosevelt; this slip is Broadway; this one is Twenty-third street; this is constructed upon the same scale; that is, constructed on a scale so that I can measure the distance; the scale is twenty feet to one inch.

Offered in evidence and marked Exhibit B.

These diagrams and models were made from actual measurements by me, as near as I could get at them, yes, sir.

Cross-examination by Mr. PATTERSON:

I heard the size of the steam-launch, twenty-one feet, I think was told me, this is made for twenty-one feet, I think so, one-quarter scale.

By DEFENDANT'S COUNSEL:

I did not measure the small boat, that is the size given me. Captain Stoney gave me the size of the small boat, what he gave me was twenty-one feet long; I do not know absolutely, I suppose he can tell; I did not see the small boat.

144 FRANK B. STONEY, being called as a witness on behalf of the defendant and duly sworn, testified as follows:

Direct examination by defendant's counsel:

I am superintendent of the ferry company, Brooklyn and New York Ferry Co.; have been such four years: these models and diagrams were made under my supervision by the last witness, Mr. McMullen; I saw the steam-launch before having this diagram made or these models; I saw it at Wallabout basin; I measured it;

her dimensions were length over all twenty feet four inches, five feet three inches over all, beam; depth from bottom to gunwales nineteen inches; she was round-bottom, sharp at both ends; the height of the upper part of the gunwale from the flooring of the boat inside was nineteen inches; she was decked over forward and aft, with an opening amidships; the part on the model that is raised indicates the cockpit; the outside represents the waterway or combing and inside deck, gives her more freeboard, or what is commonly called washboard; there were combings around this cockpit; the height of rails running around was five inches; this boat is constructed in proportion upon all these things; the height of the awning post was three feet five inches from deck to top; there were seats in the boat; one went around the cockpit, continuous, around aft, from the after part of the engine around; in the full part of the cockpit there was only one that the engineer used; I presume the paddles were boxed; it was at the top, at any rate; well, I presume you would call it a wheel-top, but I should not; this was rather a frail concern; one of the paddle-boxes was broken when I saw them,
one that was not; that was on the port side, that covered the
145 wheel; it projected beyond the side of the boat sufficient to cover its flukes up or fanlight; that was eight inches above the top or gunwale of the boat; I think it was Monday afternoon after this accident that I saw the boat; the color of the launch was white, fairly clean; I think there was not any black streak or anything of that kind; I did not see any smokestack when I saw her; there was a small indentation on the starboard side, forward on the ran, that part used as a fender.

Witness marks on model of launch.

The character of that mark was a slight indentation in the ran on the extreme outside of that point; I don't know how thick the gunwale of the boat was at that point; I estimate an inch and a half; I would say, from my general knowledge, an inch and a half; the length was the width of the rudder—an inch and a half on the face, the width of the thickness of the rudder; the length of it, from the top of the gunwale down, was the width of the ran—whatever that may be; that piece strung around the outside is termed the ran; this indentation is as wide as the rudder is thick; it did not touch the hold of the boat; this was the extreme outside, perpendicular, an inch and a half in width—the thickness of the rudder; these paddle-boxes were made of a strong stuff of some kind, three-eighths of an inch thick; I don't know whether ash or pine wood; I looked at the stern post of this boat; I observed something about that particularly; she had been a stern-wheeler at some time; I observed that from the shaft bored in the stern post; she was in the water when I saw her; I did go on board of her; I have had a varied experience quite extensively of boats generally; my experi-
ence enabled me to say from what I have described of this
146 boat whether she was a strong boat or not; she was a cranky boat; I ascertained that by stepping on her side; my weight is 170 pounds; the effect of my stepping on her side was she careened

four and a half inches; the height of the boat from the water edge as she lay to the top, to the gunwale eight inches; the effect of my standing on the gunwale was I sunk her four and a half inches on that side; I presume that elevated her rail on the other; the effect of my suddenly springing off of the gunwale I stood on would be she would return very suddenly to her level; would not remain steady; she would sally some till she remained steady.

No cross-examination.

WILLIAM EARLY, being called as a witness on behalf of the defendant and duly sworn, testified as follows:

Direct examination by defendant's counsel:

I was on post near the foot of Broadway, Brooklyn, on July 21st, Sunday, 1895; I was called down there at the time the New York ferry-boat came in about eight o'clock, or a little after eight o'clock; at a quarter or twenty minutes past eight, when I got down there the boat was already into the dock; the condition of the slip at that time as to light was the lights were lit, the electric lights were lit on the slip and lit on the boat and lit on the street—on the corner; I have not any recollection of the condition of the weather about that time; I did not pay any attention to it as to whether it was cloudy or overcast, or not; I don't remember; where there was no artificial light it was dark, dull; the light on the corner was lit I think fifteen or twenty minutes before that; I only had
147 to go about 100 feet; I left the corner at a quarter or twenty minutes past eight o'clock and went right down on the bridge; the lights on the corner had been lit, fifteen or twenty minutes; I stand on that corner to help people across the crossing after seven o'clock nights when I am on post; at the time when it was lit I took out my watch to find when it was lighted; I could not tell what it was then, but when I was called to the corner I looked at my watch; when I got to the dock I saw Mr. McCann or Mr. Williamson, the men who were in the boat, they were standing on the corner; I think that was fifteen or twenty minutes past eight; I did not see Captain Baulsir at any time during that evening; I did write something while I was there; I wrote down the names of the two men in the boat; I wrote down the name of Mr. Williamson and the name of the boat; I reported to the station the time I left the corner that it happened; I wrote that down on the bridge.

By the COURT:

I had electric light to write it down with.

By DEFENDANT'S COUNSEL:

I did have occasion to use the electric light to write it down with, I had to move out of the shadow to write it; I did write out the report there; the hour in my report was 8.20.

Cross-examination by Mr. PATTERSON:

At the time I got there the boat was in the slip; I did not get there before it came in; at the time this lamp was lit on my corner it was dusk—twilight; the street lamps in the city of Brooklyn are lit about sundown, and this lamp was lit about sundown; and I got away fifteen minutes after that.

148 FRANK B. STONEY, being recalled for the defendant, testified further as follows:

By DEFENDANT'S COUNSEL:

I remember this night, the 21st of July, Sunday, 1895; I do not remember when the ferry-boat New York came in that evening when the accident happened; I was not there; I was at home at eight o'clock that evening; I live ten minutes' walk from there; I left for home probably five o'clock; I have no recollection; the lights, when I returned to the ferry, were all right; it got dark earlier than usual that evening; I had no particular recollection how early; I cannot state anything about the condition about eight o'clock; I was home at the time; only when I returned the lights were lighted; the boat was not there, she had gone out.

By Mr. PATTERSON:

It was a quarter of nine, probably nine o'clock, when I got there.

WILLIAM T. RAYNOR, being called as a witness on behalf of the defendant, and duly sworn, testified as follows:

Direct examination by def't's counsel:

I live at No. 147 Hull street, Brooklyn; I am a waiter; I remember Sunday, the 21st of July, 1895; I was on the ferry-boat New York that evening; went on board of her on the New York side, Twenty-third Street ferry, about ten minutes to eight; had been out to Tremont park; I crossed on the boat to Brooklyn; I was on the forward part of the boat; I noticed this tow in the river that has been spoken of; I remember when the New York turned
149 for the purpose of going to the Brooklyn side; after that I saw the excursion barge; I saw this launch said to have been run over; as the ferry-boat entered the slip of the Twenty-third Street ferry I noticed the steam of the launch; when I noticed it, it seemed to be half the distance between the bridge and the ferry-boat.

By the COURT:

It was about 100 feet away from me when I first saw the steam-launch.

By DEFENDANT'S COUNSEL:

I was leaning against the guard-rail forward; I was looking forward; the condition of the weather at the time was very cloudy, gloomy, dark; I did not notice the lights on the New York; I did

on other boats on the river; there were no lights on the launch when I saw her; what attracted my attention to her was the reflection from the electric light just above the bridge in the ferry-house; that reflection of the electric light was cast right on the water, through the slip; it seemed to run out nearly to the short arm of the slip and on the sides of the slip where there was no reflection it seemed dark; when I first noticed the small launch she was apparently still, just about midway of the slip; at that time the ferry-boat was running toward the slip; I heard whistling from the steam-launch; that was after I saw the steam-launch; that continued; one blast and then two toots; it did not continue till the ferry-boat came up to the steam-launch; when it stopped it was thirty or forty feet from the ferry-boat; it was not the whistle that attracted my attention to it first; I saw the steam-launch first; I did not notice whether it was white or what color; I did not notice the smokestack; I heard signals on the ferry-boat; I heard the
150 two bells on the ferry-boat before I saw the launch; I heard the two bells a very few seconds after I saw the launch; the bell I heard was two bells; with regard to the ferry-boat I heard the motion of the paddle-wheels; the paddle-wheels were stopped when I heard two bells; they were reversing, I knew that; they were thirty or forty feet away from the small boat when they commenced to reverse; then the ferry-boat still continued to go ahead; the ferry-boat went ahead very slowly; the ferry-boat when the wheels were reversed went very slowly; the steam-launch got up to the ferry-boat; as she neared the steam-launch I heard one man say "Give me your hand, for God's sake!" and two or three men ran to the forward part of the ferry-boat and put out their hands, and I saw a man dragged up on the deck of the ferry-boat; on that occasion the ferry-boat struck the rack, certainly; it touched on both the long and short rack; she struck the long rack first; that is the highest up the river, the one that goes out into the river; I mean the boundary of the Twenty-third Street dock farthest up the river; she struck on the rack first towards the outer part; I could not see how far from the extreme end of the rack, because I was forward in the ferry-boat; I could not see; I was forward; she did not strike with her bow; she struck first the long rack; the side I was on touched the long rack; the boat lay then her head going directly for the slip; just about this part of the ferry-boat struck the rack; (model); the right-hand side of the ferry-boat struck the upper rack; the right-hand side of the ferry-boat, certainly; as I went into this slip the right-hand side of the ferry-boat was next to the long rack; as the boat went into that slip the right-hand side of the boat was toward the long rack; that was the side
151 that touched the long rack; she touched the other rack on the port side; she did not cross from there to the port side; it seemed that her stern was swung against the shore arm; her stern was swung across her port quarter; so that when she was swung across she was lying substantially across the pier; the little boat at that time was just ahead of the ferry-boat; they were bearing her off with boat-hooks; the men had got on the deck.

Cross-examination by Mr. PATTERSON:

The ferry-boat did stop; she stopped in the slip before she reached the bridge, several feet from the bridge; I should judge from here to that door; might be farther than that; she was about as far as from here to that other door from the bridge when she struck the steam-launch; I should think that is thirty feet, between thirty and forty feet; I had been to Tremont, New York; I left on some train, came down on the elevated; I did not notice what time I left; I got there in the afternoon; I stayed there about half an hour; we intended to go up on the west side, and made a mistake and took the east-side train; we left Brooklyn by way of the bridge, about between one and two o'clock; I left the Brooklyn end of the bridge between one and two o'clock; I did not notice whether it was nearer to one or nearer to two o'clock; I don't know how long it took to get up to Tremont; I don't know whether it took more than an hour to go up on the elevated railroad; I don't know whether it takes one or five; I know it did not take us five hours; I can give you no idea how long it did take me; I wouldn't say anything about the time; how I know what time I got on the boat is, I had an appointment to get back to Brooklyn at eight o'clock, that is why I was so interested to be back; I looked at the time; I got the time in the ferry-house; Tremont is not the only place we went.

152 By the COURT:

Oh, I had company, sir.

By Mr. PATTERSON:

I had one more, sir; besides Tremont, we went on the west side to High bridge from Tremont; I said a moment ago that we meant to go up on the west side, that we went up to Tremont by mistake and when we found our mistake we came back again; we came as far as One hundred and twenty-fifth street and went across on the west side; I don't know how long we stayed on the west side; on the west side we went to High bridge; we did not go to any other place besides the bridge; just walked across the bridge; we did not walk back; we did not take a cable car back; I do not know how long it took us; I did not drink anything; we could not get anything to drink; I have been a waiter nearly all my days, sir; I didn't particularly want any drink; I do not know how long we stayed at either of these places; we intended to go farther than High bridge; but the time did not admit to go; we had to be back at eight o'clock; I said I do not know what time we left High bridge; I know that the time did not admit of our going farther, because the sun was getting low; I could see the sun; I did not have a watch with me; I watched the sun to see if it was getting low; it was very cloudy that afternoon, but we could see sufficient to judge by; I could see the reflection of the sun through the clouds; I could not see the sun but could see the reflection of it; I judged by the reflection of the sun through the clouds how low it is getting; and for that reason I wanted to get home; I had an en-

gagement at home on Hooper street, in Brooklyn, where I live; I say it was ten minutes to eight o'clock when I saw the clock
153 in the ferry-house; I did not get there after the gates were closed; we got there in time to catch the boat.

By the COURT:

Q. How long were you there before the boat started?
A. She came right away.

By Mr. PATTERSON:

I did not notice whether we were the last people that got on; I know whether we were there in time or not; we did not run—a quick walk; I don't know whether the gates shut just behind me; there were others behind me; it was ten minutes to eight before I reached the ferry-house; after I got in I noticed the clock in the ferry-house; it was not daylight then in the ferry-house, twilight or that; daylight and twilight are same thing; twilight must come up between darkness and night.

Q. When you say twilight, you mean light that you could see two or three blocks around you?

A. Twilight, yes; I could not see in that light across the river, not half way across the river; I could see outside the ferry slip, a small distance.

Objected to; objection sustained.

I don't remember now what part of the ferry-house the clock I saw was, but I always look at the clock in the ferry-house when I reach there; I will say there was a clock in the ferry-house that night; sure; I cannot remember where it was; I cross the ferries very often, and there are clocks situated in the ferries—parts of the ferries; I always look at them; I look at it as a guide always count the time, and always look at the ferry clock; every clock I see I look at; I noted the time in my mind; very seldom I am
154 called on anything of this kind; I recollect this particular time, because I wanted to be home particularly at eight o'clock; I did not get home at eight o'clock; a long way after I got home—about half past eight; my place was No. 293 Hooper street then; I cannot say how many blocks that is from the ferry; I never counted them; I did not walk; I took the trolley car; when I walked into the ferry on the Brooklyn side it seemed darker than when I left the Twenty-third Street ferry-house in New York; I saw the Blackbird; I read her name; she was not 400 or 500 feet away from us; she was some time, but not at the time we passed her; I don't know how far away she was when I read her name; not 200 or 300 feet; we seemed to pass pretty close; it may have been 200 or 300 feet; I could not say I read the Blackbird's name 200 or 300 feet away; I could see the steam-launch very plainly; I saw it before the whistles blew; I don't know that it was more than 200 feet away that the ferry-boat was before the whistles blew; she was not; I was not more than a block away; an ordinary block; it was as much as a block away when I first saw it.

By the COURT:

My idea of distance about the width of this room, this way is between thirty feet and forty feet, I think.

By Mr. PATTERSON:

I don't know how much an ordinary block is; I have no idea, whether 200 or 700 feet or a thousand feet.

THOMAS B. LUTHER, being called as a witness on behalf of the defendant and duly sworn, testified as follows:

Direct examination by defendant's counsel:

I reside in Jersey City; my business is steamboat master;
155 I am in John H. Starin's employment; I have been in his employment nearly two years; before that I had been boating ever since I was thirteen.

By the COURT:

I had been in similar employment about thirty-four years.

By DEFENDANT'S COUNSEL:

Plying on the waters of New York; I know the steamer Blackbird; I was on board of that steamer in July, 1895; my position on board the steamer Blackbird in July, 1895, was master; that was my second year as master of her; I am still in the same employ, but not on her; she is laid up for the winter; I remember Sunday, the twenty-first day of July, 1895; during that day the Blackbird had a party from Sixty-third street, East river, up the North river and return; an excursion I mean by a party; an excursion party; one barge; up the North river to Rockside park; we got back from there at Sixty-third street at 8.45; Sixty-third street, East river; we started from Sixty-third street, East river, and got in at 8.45, about; the condition of the weather as we got to the Battery coming out of the North river was dark, very cloudy—indications of a heavy shower; dark, so that we lit our lights about twenty minutes past seven off the Battery, pier No. 1, North river; the difficulty about entering the East river with regard to darkness or lights was it got dark very early that night, and we sent an extra man on the lookout for precaution; we put the extra man on lookout off the Battery; the tide at that time was strong flood; going up the East river I remember seeing ferry-boats; we meet them all in their turn; I could not say whether we met the ferry-boat New York coming down; we hardly noticed their names as long as we
156 kept clear of them; had no object finding their names; I could not say where we met any after passing Grand street; probably met them in that neighborhood; Sundays they don't run as often as week days; we probably met them, but I would not say how many or what; the other craft on the river were all lit up; when we got to Grand street, East river, I could see a light a good distance; it was night; I could not say how far I could see on the

water without artificial light after leaving the Battery—probably a mile—without lights; I mean to say that I could see objects as far as that when it was as dark as I have said; objects as large as a ferry-boat; take a small boat—I have no particular judgment on that subject—I could not say; take a small boat—twenty-two feet long, nineteen inches freeboard—if they have lights we could see them probably one-half or three-quarters of a mile; in the absence of lights you would not see them 300 yards away; I would not say I know the name of any of the ferry-boats we saw; we met them in their route.

Cross-examination by Mr. PATTERSON:

We were off Broadway, Brooklyn, nearly 8 o'clock; in mid-stream, nearly; I do not say we were off the Battery at 7.20; we lit our lights at 7.20; I didn't say "we lit our lights at 7.20 when we were off the Battery," I didn't use those exact words; I did note the time when we were off the Battery; I took out my watch; I did not put it down; I recollect now that it was about half past seven by my watch when we were off the Battery; I could not give it exactly; my attention was called to the necessity of recollecting what time my watch showed when we were off the Battery, when I put
the extra man on the lookout; in passing any given point
157 we notice the time; I noticed the time when we landed at Sixty-third street; I set that down; I have a record of that; our boat and barge proceeded in somewhat slowly.

Redirect by defendant's counsel:

(Paper shown witness.)

I recognize this paper; that is my handwriting; that was made as we proceeded on our voyage that day, different landings; that refreshes my memory now as to the time of any of these occurrences, the hour of landing, because I would hardly remember that; I say the hour of landing, 8.45, I think; I have not looked at the paper before, have not seen it as I know of since the day I left it at the office; there is not anything on it that refreshes my recollection; only the regular notes made of the voyage; that is a report made by me.

JAMES T. FLANNING, being called as a witness on behalf of the defendant and duly sworn, testified as follows:

Direct examination by defendant's counsel:

I am a New York river pilot, New York and vicinity; I have been a pilot between four and five years, licensed during that period by the United States authorities; in July, 1895, I was pilot of the Blackbird; I remember where she went on the twenty-first of July, 1895; I remember returning and passing the Battery; I did not look at the time then; I judge it to be along half past seven at that time; it was getting dark; our boat was lit up; I could not say ex-

actly where we did light up; our lights were lit at the Battery; the other vessels on the stream along on the river as far as I noticed, were lit up; I took notice of the ferry slips; they were lit; I remember passing ferry-boats on our way up to Sixty-third
158 street, in the East river; I was on the forward end of the barge, on the hurricane deck, not at the wheel on the lookout; I do not remember any ferry-boats that we passed on our way up; I could not say exactly what time it was when we were opposite Broadway, Brooklyn; I did not look at the time, might take forty or fifty minutes from the Battery to go to the foot of Broadway, Brooklyn, in my best judgment; we had a barge in tow, a large barge; when we got up to the foot of Broadway, or opposite the foot of Broadway, it was unusually dark on account of being rather cloudy; how far I could see on the water where there was no artificial light on the water about that time, would depend a good deal on what I was looking at; looking at a twenty-foot boat, nineteen inches freeboard, painted white with a funnel on it, and an awning, there was no light to block between me and the boat, I should say I might be able to see it between 100 and 200 yards.

Cross-examination by Mr. PATTERSON:

I could not tell you how far it is from the foot of Grand street, New York to the foot of Broadway up to Sixty-third street; I could not tell you how far it is from the Battery to the foot of Grand street, the distance may be greater from Grand street to Sixty-third street, than it is from the Battery to Grand street; I believe that a mile on land is about twenty blocks; if you begin at First street it would be three miles to Sixty-third street, the foot of Grand street, New York, is considerably below First street, so that it is a little over three miles from the foot of Grand street, New York, to Sixty-third street, more than three miles; from the Battery to the bridge I should think it was about a mile; I don't know that from the bridge to Grand street is not more than half a mile on the water; the bridge is about three or four blocks below Cath-
159 erine street, I think this chart of the river is correct; Corlear's Hook is about Grand street, that distance would be something over half a mile, not much over half a mile; my idea is that from the Battery to Grand street is about a mile and a half; whether that would be a short mile and a half would depend a good deal upon circumstances; a great many times on the water you are obliged to cross the river three or four times going that distance with the flood tide; I know our object was to wait for the tide, and when we got to Tenth street we could learn the condition of the tide and that we went faster from there up; I know that we had the tide with us from the Battery to Grand street; the tide did not begin to run the other way after we left Grand street; the tide did not change at Sixty-third street, at ten minutes past nine, still flood; it depends a great deal on the wind whether it ceased to run at high water; the wind that night was from the southward and westward; we should go faster above Tenth street than below, be-

cause we know the condition of the tide; the tide was with us in the beginning; I believe we put on more steam to keep up the same speed; I should say we kept about the same speed from the Battery to Sixty-third street; we kept up the same relative speed, allowing a little greater movement of the machinery when the tide weakened; if we took forty minutes to Grand street from the Battery, we would take 120 minutes for the full run, then we would have arrived about 9.30, we arrived at 8.45; maybe that shows that my calculation of the time from the Battery to Grand street must be wrong; I believe we took an hour and fifteen minutes to go the whole distance; 7.30 to 8.45; seventy-five minutes, one-third of that is twenty-five minutes; I don't know what time we got opposite this place at that time; with utter darkness between me and
160 the object I could see an unlit object 200 yards away provided there was nothing between me and the object to interfere.

By the COURT:

We light up boats on the river at sunset without regard to any darkness, not later than that, so as to be thoroughly lit up before dark, when darkness comes.

By Mr. PATTERSON:

We light up usually a few minutes before sunset, so as to keep them burning from sunset to sunrise as the law requires.

Redirect by defendant's counsel:

We usually have one man on the lookout at that time in the evening in summer; we had two men on the lookout on this night; we put on the second man about pier A, North river; it was necessary to put on the second because the weather was rather dark, had been dark all through the evening, as a matter of precaution; the captain suggested the second man on the lookout; I don't remember meeting any obstructions in our way as we went from the Battery to the foot of Grand street, with this barge in tow.

MICHAEL DELANEY, being duly called as a witness on behalf of the defendant and duly sworn, testified as follows:

Direct examination by defendant's counsel:

My business is a steamboatman; I belonged to the Blackbird in July, 1895; my position was mate; I remember returning that day with a boat—a barge—in tow from an excursion; we got to the Battery about 7.20; I know the time, because I put my lights
161 up at that time, and the clock was right alongside of me in the pilot-house; I left the pilot-house to go down and put my lights up; that was about pier A, North river; it took a few minutes—ten minutes or so to go from there to the Battery; that would bring us to the Battery about half past seven; the condition of the atmosphere at that time was quite dark; we had the pilot and the captain of the barge on the lookout when we passed the

Battery; the pilot is not always on the lookout; by the captain of the barge I mean the captain of the boat in tow; we had another lookout aboard the Blackbird; always a man on the lookout; on that night we had one for Blackbird and one for the barge, two men on the lookout; as to other boats we met on the river after turning the Battery, they were all lit; I noticed the ferry slips, they were all lit; I think I could see on the East river without lights after turning the Battery, about 100 yards; I could see a boat twenty feet long, nineteen inches freeboard, wheels twenty-two inches in diameter, and a low smokestack on it, about 100 yards; I do not remember meeting any particular ferry-boats that I could name; I could not tell at what point on the river we met ferry-boats going up the East river.

Cross-examination by Mr. PATTERSON:

Pier A is on the North River side; that is the place I went out of the pilot-house for the purpose of lighting our lights; I looked at the clock going out of the pilot-house; I remember it at this time; my attention was never attracted to the necessity of remembering this precise time before I took the witness stand; intervening the evening of July 21st, and the present time, I never thought
162 of the fact that it was twenty minutes past seven that Sunday night when I lit the lights; I am not able to remember seven months the exact time I left the pilot-house every evening, but on an occasion like this I do; my attention was first attracted to this case Sunday last; I never knew that the Blackbird was in any way connected with the accident until Sunday last; I never knew anything about this case until Sunday last; I told you that I remembered the appearance of the clock at the time I left the pilot-house.

By the COURT:

From that time up to Sunday last my attention was never called to it in any way, shape or manner.

By Mr. PATTERSON:

I had no reason up to Sunday last to keep it in mind; I kept it in mind, nevertheless; I did not keep the time in mind that I left the pilot-house on the 28th of July; I cannot recollect the time I left the pilot-house on the 14th of July.

By the COURT:

I can give another day than this.

By Mr. PATTERSON:

About the 13th; I don't know what day of the week that was; we were up the North river to Oakdale; I know the time I left the pilot-house that night, about the same time for the same purpose; the boat was then on the North river, about the Fall River line; I don't recollect any other day; on that day, the 13th, I was quite

busy; I was busier that day than on any other day; the reason I have for recollecting the precise minute I left the pilot-house on the 21st is because it was quite dark, and we never
163 light up till sundown, and I thought it was quite early to be dark; there were other dark days when we lit up before sundown; Captain Luther first spoke to me about being a witness in this case; he did not tell me what time we passed the Battery; I did not talk with him about it; I know what time we arrived at Sixty-third street; I was not given to understand by anybody that it would be well for this steamboat Blackbird to help the other steamboat out, nor that Starin had better furnish witnesses here, and the ferry company might reciprocate on other occasions; no such thing was given me to understand, nor that it would be a good thing for the pilots and steamboat captains to stand together here.

Redirect by defendant's counsel:

I never heard anything of that kind except from the counsel now; that boat went on that Sunday up the North river to Rockside; I remember that occasion by reason of where the excursion boat went, and the coming back; there is nothing about the place where that boat went that day and her coming back and passing up the East river that called my attention to the particular occasion that Sunday night, no more than the excise people were after us; Dalton Post chartered the barge that day; I remember that; I had friends on board; there is something about that that calls it to my recollection.

Recross by Mr. PATTERSON:

The presence of my friends on board had nothing to do with the recollection of the time I left the pilot-house; two men were on the lookout; that is all that were on the lookout; one from the barge and one from the Blackbird.

164 JOHN OWENS, being called as a witness on behalf of the defendant and duly sworn, testified as follows:

Direct examination by defendant's counsel:

I am a driver in the employment of Havemeyer's sugar refinery, the American sugar refinery; in July, 1895, I was in the employment of Hecker's flour mill; I remember Sunday, the 21st of July, 1895; I did not see this accident or any part of it; I remember the Sunday it occurred; I only seen the steam-launch passing the pier; South Sixth pier—South Fifth street; I was then on the end of the South Sixth Street pier; she was going down towards the Battery at that time; it was then about ten minutes to 8 o'clock; as she went down she went about eighteen feet out from the long pier, South Fifth Street pier; about that time it was just getting on to dark; there were no lights lit on this boat that passed; South Fifth Street pier was lit up; the other boats I did not take notice of; I

saw who was in this boat as she passed; three persons, one at the bow, one midships, and one astern; I am positive it was this boat I went out afterwards; after the accident happened, me and a young fellow named Charles O'Brien went out in a small boat and towed the launch out; we found it under the ferry bridge; I saw Mr. Williamson or Mr. McCann at that time down on the ferry-boat; I talked with them, five minutes after the accident; five or ten minutes after I saw her pass the pier I was on; when we took her to tow her around to South Sixth street, the awning of the launch was hanging in the water and the smokestack out of it; she was crushed on the side, where the paddle-box was broke off; that is all I seen; about an inch and a half of water in her, I got in to South Sixth Street pier; Mr. Williamson asked me to
165 see if there was any water in her, and I put my finger down; I was accustomed to boats; there is always some water in every boat, almost; that is all I know about this.

Cross-examination by Mr. PATTERSON:

We went out and rowed on the river in the dark or whatever light there was, I could see to New York; it was light enough for me to see the New York shore; when we got in the slip it was dark; there was an electric light inside the slip but when we got in it was dark; that was after pulling down against the tide to the ferry slip; we towed the boat around to South Sixth street, and had to wait till the tide started up, and the storm started up and it was after nine when we got back; we did not go into the slip till the ferry-boat had left, the New York, it was then nine o'clock; then is the time it was dark in the slip; I could see it as it passed by the line of boats at South Seventh street.

By DEFENDANT'S COUNSEL:

I mean when I said I could see the New York side, Broome Street and Delancey Street piers; it was lit up.

By Mr. PATTERSON:

Where there were no lights I could see New York, but no particular places; I could see a boat of this size about mid-stream.

CHARLES E. O'BRIEN being called as a witness on behalf of the defendant, and duly sworn, testified as follows:

Direct examination by defendant's counsel:

I live at 431 Kent avenue; I am an axle worker; I was with the last witness on the pier on the 21st of July, 1895; I seen
166 this boat passing around on the South Fifth Street pier, forty or fifty feet out; the weather then was getting pretty dark and cloudy; I could not say the ferry slips were lit up at that time; I did not look over in that direction; I did not pass any remarks about the boats; I saw three persons on the launch; we went down

to the slips about twenty-five minutes after that; when I got ove to the slip it was lit up; I saw Mr. Williamson and Mr. McCan there; I helped to row this boat.

Cross-examination by Mr. PATTERSON:

I could not see this boat across the river without a light; I could see a boat like this, twenty feet long, in mid-stream.

GEORGE F. ARMSTRONG, being called as a witness on behalf of the defendant and duly sworn, testified as follows:

Direct examination by defendant's counsel:

I am a floor-walker; I was in the eastern district on the 21st of July, Sunday; I did not see the accident, I knew there was an accident from the evidence surrounding it, that is all; I saw the boat passing the pier, foot of South Fifth street, I believe it is called; I was on that pier at that time, down very near the end of the pier, when she passed; she was going downstream, apparently heading a little in shore; I believe two blocks from the Twenty-third Street slip; I did not see her from the end of the dock, a little to one side; she had gone around the end of the dock when I saw the launch, I should judge she was about forty feet from the dock at that time; I watched her after that pretty much down to the slip from the fact that she seemed to be laboring very hard; she seemed to be making rather slow progress; down to the first slip in
167 view from South Fifth street, I presume that is the Twenty-third Street slip; I could not state positively what time it was then, I could give you about the time, I think it was about a quarter of eight, possibly ten minutes; I did not go down to the slip after that; I did not see the boat any more, I went away purposely.

Cross-examination by Mr. PATTERSON:

I don't know the number of feet at all that I kept her in view; I have no idea of measurement on water; if the blocks are 200 feet long, it was 400 feet; I kept her in view till she got to that slip; I don't think there was plenty of light to see her till she got there; I saw the object; if I had not seen her at first I would not have known what she was afterwards.

B. H. HAWKINS, being called as a witness on behalf of the defendant, and duly sworn, testified as follows:

Direct examination by defendant's counsel:

I am a barber; I live at 853 Myrtle avenue; I remember Sunday, the 21st of July, 1895; I was on that evening in the vicinity of Twenty-third Street ferry on the Brooklyn side, sitting on the chain in front of the ferry-boat, City of New York, coming from Twenty-third Street ferry on the New York side; according to our time,

which was stated here, at the time we left the ferry on the New York side it was ten minutes to eight; coming along on that trip just about midway there was an excursion boat passed; I do not know what boat it was; it was a steamboat; I could not say that I knew it was an excursion boat; an excursion, what it was I don't know; just before we got to this excursion boat—I think the boat we were on stopped a little to let this excursion pass; after the excur-
168 sion passed, the ferry-boat that I was on at that time was pointed down towards the Battery, right straight down mid-stream; she turned towards the Brooklyn shore, soon after this excursion boat passed; then, according to my present knowledge, I think the ferry-boat made a turn; after that I did not see any small boat ahead; I heard whistling; I could not exactly tell the distance the boat I was on was from the Brooklyn pier from the end of the pier or dock at the time I heard the whistling, not knowing much about water, but according to my present knowledge of the distance, I think about 200 feet away; I looked to see what occasioned the whistling, to find out where it came from, but did not see anything; at second whistle I saw the steam-launch; I suppose it was two or three minutes between the first and second whistles; I am not much posted in regards to water, but according to my present knowledge when I heard the second whistle and looked, the steam-launch seemed to be distant from the ferry-boat from here to the back part of this room; that was not the second whistle.

The COURT:

About seventy-five feet; just when we got about thirty or forty feet from the steam-launch the bells on the ferry-boat gave the alarm twice; what it meant I don't know, I am not posted on those things; the boat stopped, the engineer as near as I could remember had reversed his engine and stopped moving, but the boat drifted along a little after he had reversed; after this ferry-boat reversed the engine it was still moving, and so was the steam-launch still trying to get by the slip; that moving which I speak of after the engine was stopped, is what I call drifting; the launch was moving very slowly, seemed to be trying to paddle across the slip; positively, beyond shadows of doubt, the
169 steamboat and ferry-boat drifted together, the steam-launch onto the ferry-boat; at that time I was holding the man that pulled the old gentleman in to keep him from falling overboard; I did not see the second man at all; then the launch drifted right under side the ferry-boat; the boat goes from Twenty-third Street ferry into the slip this way; we pulled the old gentleman in here; the launch drifted in under here (model); under the left bow of the ferry-boat; that was not after the man got on board of the ferry-boat; the man got on board of the ferry-boat just as the launch went under the ferry-boat the old gentleman reached up his hand; I saw and noticed at that time the smokestack of the launch; there seemed to be an awning on the launch; I first noticed the awning on the launch when we were coming right together.

Cross-examination by Mr. PATTERSON:

I had a talk with the superintendent of the ferry company shortly after this accident happened; he did not make out a statement for me to sign; he did not ask me to sign a statement; he did not tell me that this launch purposely got in the way of the ferry-boat to make damages; if you wish me to tell what the superintendent of the ferry company said to me I can explain it; I did not tell Mr. McMahon at the Hanover club a day or two after the accident that there was plenty of light there to see several hundred yards; I did not tell him anything of the kind; I am the gentleman who was with Mr. Raynor; he was going over to Tremont for a short trip; never had seen that part of the city; we started for and were going to no particular place; we went on some train; we went over the bridge, took the Third Avenue elevated railroad; William
170 was the leader; we started from Brooklyn to see High bridge; we started from Brooklyn to go to High bridge; I did not know how to get there; I had an idea, yes, certainly; got in the Third Avenue train through William's instructions; I think the place we went to was Tremont; I think the Third Avenue elevated railroad goes to 159th street, and we changed; I don't know what we changed to; we went to Tremont; got off one train and got on another; some other train—elevated; I think we changed at 159th street and Third avenue; I am not positive; I don't know that the Third Avenue train stops at 129th street; I know we went to Tremont; I said I thought we rode in the Third Avenue railroad to 159th street; I didn't say I knowed; then we got off the elevated railroad and waited a few minutes and got on another; I said I didn't know where I was going, I was going with William; I didn't know after we left the Third Avenue train that we *we* were not going to High bridge; I didn't know till we got to Tremont; when we got to Tremont we found that we were in the wrong place, and took the Amsterdam Avenue train; we stayed in Tremont only five minutes, it was very dry over there Sunday; then we came downtown I think the Third avenue, where the cable cars cross and went up Amsterdam avenue; we stayed at High bridge about half an hour; well, I don't know as that is necessary to tell you what we done there; nothing I am ashamed of; we had a little conversation with some girls up there and had quite a good time, if I must tell the truth, and then we left.

By Mr. PATTERSON:

We stayed with these ladies about half an hour; we went up—I think—the Putnam and Hudson River railroad and we
171 crossed over High bridge; after we got over on the other side we met some girls we knew; we left the girls about half past five o'clock; after we left the girls we took the Amsterdam Avenue cable cars and the Third Avenue train; we took the Third Avenue train to the bridge, I know; got to the bridge about eight o'clock; no, sir, we did not come across no bridge to Brooklyn; didn't get to the bridge at all; I was mistaken about the bridge;

we came down to the Twenty-third Street ferry; when I said we got to the bridge about eight o'clock that was not true; I think that was simply a mistake of mine, we did not go to the bridge at all; every man is liable to make a mistake under oath.

By the COURT:

We were on the cable car from the time we left the Amsterdam Avenue car to the bridge—to the ferry rather—where we got——

By Mr. PATTERSON:

I don't know exactly the length of time we were on the Amsterdam Avenue car from the time we got on it till we got to 125th street and Third avenue, not very long; I don't think it was twenty minutes; I think about fifteen minutes; we got on that car at half past five; I could not say that we got down to 125th street and Third avenue about quarter to six; I can tell you just about what time we reached Twenty-third Street ferry; about half past five when we left Columbia Heights; we didn't get on any elevated railroads at all coming back; we came back on a street car down to Twenty-third Street ferry; I think a horse car; we got on the horse car I think right where this cable car run in; I think on the Belt line, Third avenue; I don't know what street, but we got the Belt
172 line down to Twenty-third street I mean; and the Twenty-third Street ferry when we were coming home; coming home we did not come by the elevated railroad at all, took the horse cars down, the Belt line to Twenty-third Street ferry; I don't know what avenue it was; we came down in the cable cars to Third avenue as near as I can remember took the horse cars from there down to Twenty-third Street ferry; I don't know where we got this horse car; I don't think we walked very far before we got on it; I don't remember just how we got to this horse car, I could not say, we didn't keep no track or record, we was not under special duty, anything of the kind; we struck the horse car some place not far after we got off the cable cars; he did not say he was in a hurry to keep an appointment at his house at eight o'clock, and therefore we had better take the horse cars; as near as I can remember I think I suggested taking the horse cars, I could not tell you how long we were on the horse cars, I could not, we came down to the Twenty-third Street ferry.

By the COURT:

I think we were on the horse car fifteen minutes.

By Mr. PATTERSON:

We took only one cable car on the way back; one cable and one horse car.

By the COURT:

I think that brought us to Twenty-third Street ferry.

By Mr. PATTERSON:

Fifteen minutes on each.

HENRY HEISNER, being called as a witness on behalf of the defendant, and duly sworn, testified as follows:

173 Direct examination by Judge TROY:

I am driver for John H. Schultz Co.; I was in his employ in July, 1895; I remember the 21st day of July, 1895, Sunday; I was in New York on that evening; coming from New York, coming from the foot of Twenty-third street to Brooklyn on the ferry-boat New York; I left the New York side ten minutes to eight; I know that because I missed the boat that went out before and looked at my watch, and said to a lady friend of mine along with me, We will get the next boat, that leaves ten minutes to eight; I got that boat; coming down the river I remember there were tows in the river, not more than one; I took notice when we stopped just below Houston street the excursion boat passed us, and when she passed us she swung around and went back of her; it was an excursion boat; when our boat stopped I seen the excursion boat then, she swung around in back of her stern; I do not know what that boat was; I had no reason to look at it; I mean that the ferry-boat swung around; when she swung around she pointed to Brooklyn; after that I did not notice anything till the people started to holler; then I saw steam escaping in front of the ferry-boat; as the boat was crossing over to Brooklyn I was standing out where the woodwork stops; standing about here, the right-hand side of the ferry-boat, at the time I heard the hollering.

By the COURT:

The whole front platform was covered with people.

By DEFENDANT'S COUNSEL:

When I heard the hollering, and saw the steam escaping, I squeezed my way through the gate; then I seen the steam escaping; it was coming from the steamtug from underneath the
174 boat; that is all I saw and I was squeezed away again, afterwards I saw an old gentleman pulled up the ladies' side, on the right-hand side of the boat; I mean Mr. Williamson; I saw him after that on the boat; that was the first and all I saw of it; there were lights on the ferry-boat when I went aboard; the Twenty-third Street slip was all lit up; the slip on the Brooklyn side was very light; all lit up; without regard to artificial light it was getting very dark and starting to blow.

Cross-examination by Mr. PATTERSON:

When I looked at my watch it was eighteen minutes to eight when we got into the ferry-house; the young lady is not here; she is up in Buffalo; the company came up for me a couple of days after; I gave them the time then; some of the deck hands told them I was on the ferry-boat; I know them from passing over there; I am not acquainted with the deck hands; I cross the ferry twice a day on a wagon; at that time I used to cross four times a

day; I know the deck hands only by sight, that is all; they may know I am Schultz's driver, that is all; this excursion boat did not have a tow that I saw; a single boat alone; had nothing alongside of it, nothing behind it.

Redirect by defendant's counsel:

All I seen of it was when she passed us; I know it was an excursion boat, because I could see the people on board; it was a steamboat; what was the color of the boat I could not tell you; all I seen when we passed her stern and swung around, I seen the people on board and expected it must be an excursion boat.

Recross by Mr. PATTERSON:

I could not say that it was only one boat and nothing
175 alongside it; I have seen one boat at the time when she passed our stern; I could not tell that it was one boat and nothing alongside, I don't say that I did; I did say a moment ago that she had no tow either alongside of or behind her; I did not notice any tow; I said a general excursion boat; that was true; I did notice, yes, sir, I noticed one boat; I know that there was no other alongside of her; I could only see one side of the boat.

JAMES MEEHAN, being called as a witness on behalf of the defendant and duly sworn, testified as follows:

Direct examination by defendant's counsel:

I am an engineer, in the employment of the Brooklyn and New York Ferry Company; I have been in that employment twenty-two years; I was employed on board of the ferry-boat New York on Sunday, July 21st, 1895; I remember the time of the accident to this boat; I remember we left Twenty-third street on that trip on the day the accident occurred, ten minutes to eight, I know that because we should leave twelve minutes to eight, and we was two minutes behind; I fix the time at twelve minutes to eight, because I left Brooklyn at half past seven, and got to New York about seventeen minutes to eight, and stopped there about three minutes, and I left ten minutes to eight; I was in the engine-room, I did not come out on deck at all or look in any way to see the condition of the light; I got bells during that trip from the pilot; I could not tell exactly where that was, I cannot remember, but must be down toward Broome street, by that time; after that I got bells to go ahead again; after I started ahead upon that occasion I had more bells before I got into the dock; there is no way by which I can see from the engine-room when I got the bells as to what part of the
176 river I am on, I could see ahead of me; after that after I started the second time I got one gong, but I got the little jingle; after I started ahead on the way to Brooklyn, I got one gong to slow down, I did not notice where our boat was at that time, one bell is to slow down, slowed down right then; I mean by that shut

my engine off; the boat does not stop, some more force applied to it, but not much; after that I got further bells (clapping his hands) that quick; the other bells were three taps on the gong; they meant stop and back as quick as you could; I did that; I did not look out to see where we were; I first got that bell to slow down, I mean there was a bell to stop; I did not go on deck then, I did not look out then; I did not go on deck at all till the boat was made fast to the bridge; the boat got into the bridge five seconds after I got the bells to stop, I did not see the steam-launch or know anything about it.

Cross-examination by Mr. PATTERSON:

I got the jingle when I went to start ahead in the middle of the river, or wherever we was after coming down; I don't know the distance we then went; I didn't say that I got the jingle after one bell; I got one bell to slow down; I didn't say that I got the jingle after that; I got three taps on the gong and coming down the river I got the jingle.

JOHN V. BAULSIR, recalled for defendant, testified further as follows:

By DEFENDANT'S COUNSEL:

I got my first license as pilot about twenty-two years, it has been renewed since; it was last renewed on the 15th of last September, to September 15th; before last September, it was renewed a
177 year previous to that; I have never known of an instance in my experience in the ferry, of a boat at the condition of tide and kind of night this was on the evening in question, a vessel propelled or moved by steam to stop in front of the ferry, in the position in which I saw this boat, when a ferry-boat was in or near any such position as my boat occupied going towards the shore.

By Mr. PATTERSON:

If the launch had been lighted certainly I would have seen her, then I would not have navigated my boat the way I did; when I testified that it was on my best judgment I have reference to the darkness; I testified yesterday it was on my best judgment, I have reference to the condition of darkness; I don't mean to say that that would have been good navigation if there had been daylight on that scene so that I could have plainly seen this launch; if there had been daylight on this scene, if I could have plainly seen this launch I could have kept off this launch and avoided the accident; I said before the coroner, "Think the ferry-boat would go about seventy-five feet after signalling to back;" that is the fact.

By DEFENDANT'S COUNSEL:

I was asked if I considred this good management of my boat if it had been daylight; I took into consideration in answering that question that daylight would have enabled me to see this boat long

before I did, and under such circumstances where I could have seen it, I would not have kept my boat on the course she had; when I stop the boat and there is a heavy tideway running under her stern, her head towards the tide has the same steerageway on her;
178 she would have run straight ahead while there is headway on; after you slow down she has the same steering facilities.

By the COURT:

Seeing this boat 300 feet away would have permitted me to have avoided this collision; if I had seen her at all I would have cleared her; might have been a little less, but I say 300 feet.

By Mr. PATTERSON:

I did say yesterday that if I had seen her 200 feet away I could have avoided her; that is the fact; when 200 feet off this launch I was pointed to the navy yard pretty near, and all I had to do to avoid her was to keep on my course, and not make the turn to port I did; if I could have seen her 200 feet off, under the circumstances of this case, I could have avoided the collision.

By the COURT:

Three hundred feet would have given us more room.

By Mr. PATTERSON:

I did not need to turn if pointed to the navy yard, only to keep on.

By DEF'T'S COUNSEL:

The drift of the tide after I had rung the bell to stop would take our boat 150 feet, backing would take it about seventy-five feet; if I had not stopped the engine at that time, but gone along at full speed, as I was pointed, I would have struck the launch; if I had put the helm to starboard instead of to port at that time I think we would have struck the launch; there was no way that I knew of then or can now understand that I could have avoided that
179 launch in any way except by putting her helm to port and turning to starboard.

By Mr. PATTERSON:

I did not say to you a moment ago that when 200 feet off the launch I was pointed in the direction of the navy yard; if I had kept up that course I would not have struck this launch; we have power enough in our boat to go against the tide; when I stated to Judge Troy that if I had kept up my course I would have struck her, I meant after I had made the turn, then I was within fifty or seventy-five feet of the launch.

Defendant rests.

FREDERICK P. HUGHES, being recalled for plaintiff in rebuttal, testified further as follows:

By Mr. PATTERSON:

Mr. Graham was not drunk that evening.

Evidence closed.

DEFENDANT'S COUNSEL:

On the whole case I renew my motion for nonsuit on same grounds.

The COURT:

It will be denied.

DEFENDANT'S COUNSEL:

I take an exception.

Defendant's counsel sums up for the defendant.
Mr. Patterson sums up for the plaintiff.

180 *Judge's Charge.*

DICKEY, *J.*

GENTLEMEN OF THE JURY: You are to be congratulated upon the close of this long trial. You have attentively and intelligently listened to the evidence of thirty-four witnesses who have been sworn; seventeen on each side. You have listened attentively and understandingly, I believe, to the able addresses of the learned counsel speaking for their respective sides. This is a serious and important case, probably more so than any other that most of you will be called upon as jurors, or in any capacity to decide, because it is serious and important to both of the parties here concerned. It brings with it a sense of responsibility that I am sure does not rest lightly upon you.

While special privileges are conferred by law upon ferry-boats and special watchfulness upon vessels crossing each other's tracks is enjoined by the courts, and is essential to safety, there is no rule that excepts them from the consequence of culpable negligence, or from the exercise of care and skill proportioned to the dangers of the navigation and the circumstances in which they may chance to be in respect to other vessels. This is not inconsistent with the protection given them by the law in the exercise and enjoyment of the privileges accorded them in the usage of their ordinary track as a passageway.

The burden of proof is upon the plaintiff to show that the injury was caused by the wrongful and negligent act of the ferry company, and without fault on the part of those in charge of the launch.

In actions for injuries arising from the collision of vessels navi-
gating public waters, the question is one of negligence on
181 the part of those in charge of the respective vessels, and the omission of either or both to conform to the legislative en-

actments is but one of the circumstances to be considered in ascertaining the approximate cause of the injury; and if it appears that the injury was caused solely by the negligence or want of proper care and caution in managing either of the vessels, and that disregard of the statutory regulations did not contribute to it, directly or indirectly, the mere omission to comply with the statute will not bar the action by the person hurt, but operates against the one by whose neglect the injury was caused. In the face of impending collision the rule requires that each boat shall take such timely and suitable measures to avert it as are within its power, without reference to the original right of way. The right of way is not the right to run into an unnecessary collision. Safety to lives and property requires the avoidance of accidents, if possible. It is not only a moral but a legal duty. If the pilot of the ferry-boat saw or ought to have seen the steam-launch far enough away to avoid striking her and carelessly and negligently failed to change her course enough to avoid the collision, or after he saw or ought to have seen her, changed the course so as to run into the launch, you may find the defendant guilty of negligence. In determining the question of negligence and freedom from negligence you are to consider the evidence as to the time of night it was, the degree of darkness, the absence of light on the steam-launch, the lack of experience of the men on the boat and the new and novel machinery on the launch. The most important question, probably, is as to how light or how dark it was, as bearing on the question of how far away the pilot of the ferry-boat was, or with care and prudence should have seen, the steam-launch. He testified that if he had seen it two hundred feet away he could have avoided the accident, and it would
182 have been bad seamanship not to have done so. Many witnesses testify on this subject of the light. Many testify that from the deck of the ferry-boat they saw the launch at least two hundred feet away. If ordinary observers on the ferry-boat saw the launch at that distance, should the pilot have seen her? This is for you to say. Other witnesses say it was so dark that the launch could not be seen nearly so far away. The pilot of the ferry-boat says that he did not see the launch in time to avoid the accident, and that when he did see it, he did everything that lay in his power to avoid the accident. This is a question of fact for you, and you exclusively, and calls for your best judgment, and I have no doubt will receive it. If you find that the accident was caused solely through the fault of the ferry-boat you may give such damages to the plaintiff, as the administratrix of her dead husband, as will make up to the widow and fatherless children the pecuniary damage they have sustained by his death. And if you reach the question of damages it is important to consider and regard this life as to how good a life it was. You have in proof that he was sober and industrious, that he had only reached the age of thirty-three years, that he was earning eighteen hundred dollars a year, and was engaged in a business at the time, that called for an expenditure of about forty dollars a month, his business being soliciting the sale of goods, and this being the expense attendant upon it, left him fif-

teen hundred and twenty dollars a year; for the year preceding the accident that had been his net earnings, after deducting the necessary expenditures connected therewith, and that he had made a new contract with his employer for the year to come; you have seen the wife upon the stand; you know that her children are now
183 eight years and ten years old respectively; the damages that this plaintiff is entitled to recover in behalf of herself and these two little children is the pecuniary damage, the money loss sustained by her and the next of kin by reason of this loss of life; fifty thousand dollars is claimed in this complaint; you cannot go beyond that, and in fixing the amount at that or a less sum it is for you to use your best judgment and sound sense in giving what is a fair, reasonable and proper compensation for the taking of this life and the money loss that follows to this widow and the children.

I have been requested by the defendant to charge you as to certain propositions, which I will now read you:

If through the negligence of one who is subsequently injured by reason of placing himself in or occupying a dangerous position on a street, highway, navigable river or water, another lawfully traveling or plying thereon is thereby suddenly and without fault on his part placed in a position that threatens danger, injury or death to such first person, and instant action of some character becomes necessary on the part of such second person so as to avert, prevent and avoid such consequences, such action depending solely on the judgment of the latter, his duty will be deemed fully discharged, irrespective of the result, by the exercise of the best judgment which under all the circumstances of the case in view of the confusion, excitement, immediate necessity, apprehension, imminent and impending danger, opportunity, consequences, responsibility and surprise he can bring to bear upon the subject.

Charged.

Although it might have been possible to have avoided the consequences by some other and different course from that which
184 was taken, and the failure to adopt which might create a liability under ordinary circumstances where a fair and undisturbed opportunity for observation, consideration and decision existed, yet where such opportunity did not exist, and the circumstances are sudden, confusing, exciting and unexpected, and the impending consequences involve imminent danger to life, the other party is not held to the exercise, however expert he may be, of an absolutely correct judgment; good faith and an honest effort on his part to avoid the consequences according to the dictates of his best judgment, under all the circumstances and in the peculiar situation in which he is placed, are all that is necessary to relieve him from whatever consequences may ensue.

Charged.

While it is true that the negligence of one person, however great, will not justify the commission by another of a wilful act of aggression upon him which involves and inflicts an injury, it is nevertheless equally true that one who places himself negligently in a position of danger, or is so placed by reason of his own negli-

gence, and is thereafter injured in such position, and by reason thereof by another who negligently but not wilfully collides with him, the result is the effect of the combined negligence of both parties, and the plaintiff cannot recover.

The COURT:

I decline to so charge.

Mr. PATTERSON:

I will consent that your honor charge that, with the qualifications contained in your charge as given already.

The COURT:

I charge then as requested by the attorney for the plaintiff.

185 Where the commission of negligence by one or more persons acting together suddenly place- not only the person or persons committing it, but another and innocent person in a dangerous position involving imminent and impending peril to both, the person who is without fault has the right to escape from such impending danger by whatever means in his judgment at the time are absolutely necessary for that purpose without regard to the result or consequences to the other party, and he would be sustained in the exercise of such judgment and in adopting such means, although it should subsequently appear to have been incorrect, if it was exercised in good faith and in the honest belief that it was absolutely necessary to ensure his own safety. While he may not by wilful carelessness or otherwise intentionally and unnecessarily imperil the other party in seeking safety for himself even when threatened with imminent and impending danger by the negligence of such other, he has the right to adopt such means as in his best judgment are absolutely necessary for his own safety regardless of the result to the person whose negligence occasioned the peril.

Charged.

Where by the negligence of one or two persons who are strangers and are acting separately and independently and engaged in different pursuits both are placed in a position of danger—mere negligence on the part of the person thus subjected to danger without any fault of his own in attempting to avoid such danger which serves to precipitate rather than avert it will not render the latter liable for an injury thereby occasioned to the original wrong-doer.

The injury under such circumstances must be attributed to the combined negligence of both parties.

186 The COURT:

I so charge.

Error of judgment in the case of a sudden and unforeseen emergency involving imminent danger to the person called upon to avoid the danger either to himself or to another in an honest effort to so avoid it, the situation not having been brought about

by any fault or negligence of the former, does not constitute or amount to actionable negligence.

Charged.

A party who places another in peril cannot complain if he does not exercise the best judgment in extricating himself from such peril. A party thus in peril must do the best he can to save himself and if he fails the party who placed him in peril must be held responsible.

Charged.

If the plaintiff's intestate and his associates by any negligent act or omission on their part, or that of any of them in the management or navigation of their boat or the management of its machinery, or in failing to adopt proper, necessary, and usual precautions which might involve their safety or in voluntarily undertaking to operate or experiment with unsafe, unreliable, and untried machinery, or without thoroughly understanding the same by venturing therewith and dependent thereon into a dangerous place or one which might suddenly become so or otherwise caused by their negligence or that of any of them, the circumstances of peril, and created the emergency the plaintiff's intestate was not released from responsibility because the pilot of defendant did not exercise the soundest discretion in his efforts to obviate the consequences of his fault or that of himself and his associates. The danger is imminent; the law does not de-
187 mand that accuracy of judgment required under other circumstances. If such negligence on the part of the plaintiff's intestate or his associates or of all or any of them placed the defendant's pilot in such a position, that, in view of the impending danger to his boat and his passengers, or to the intestate and his associates, or either or any of them, he was compelled for the purpose of avoiding such danger in the exercise of his best judgment at that time and under the circumstances in which he was so placed to adopt a perilous or dangerous alternative, the defendant is not responsible for the consequences, although such acts of the pilot in the emergency was the immediate cause of the injury.

Charged.

The burden is on the plaintiff to show that her intestate was free from negligence.

Charged.

The plaintiff's intestate and his associates in the management and navigation of the boat and in the management of the machinery being all jointly engaged in such management and navigation, the negligence of any one of them in that behalf must be attributed to and regarded as the negligence of all and of each one.

Charged.

The refusal of the court to charge any proposition requested by the defendant cannot be considered by the jury, and they are not at liberty to draw or form any inference or presumption of law unfavorable to the defendant from such refusal.

The COURT:

Of course, that has no application, because I have not declined to charge, nor will I, any request as contained in the paper.

188 The defendant and its agents and servants, without having any knowledge or notice or reason to believe to the contrary, had a right to assume in the transaction of its business and the operation of its boats on the river in the regular course thereof at all times, including the time of the happening of the accident in question, that all persons operating or navigating vessels propelled by steam on the waters of the East river had complied with and were proceeding under and in obedience and according to all laws of the United States applicable to such persons, vessels and navigations, and all rules and regulations made and existing thereunder, and that all such vessels were properly supplied with competent persons, such as the law required, as engineers and pilots and with proper engine, boilers and machinery, with lights and whistles.

Charged.

That the deceased and his associates in the boat were negligent in not exhibiting a light on the boat as required by the laws of the United States, and if such negligence contributed to the accident the plaintiff cannot recover.

Charged.

"SEC. 5344. Every captain, engineer, pilot or other person employed on any steamboat or vessel by whose misconduct, negligence or inattention to his duties on such vessel the life of any person is destroyed, and every owner, inspector or other public officer, through whose fraud, connivance, misconduct or violation of law the life of any person is destroyed, shall be deemed guilty of manslaughter, and upon conviction thereof before any circuit court of the United States shall be sentenced to confinement at hard labor for a period of not more than ten years."

189 Charged.

The COURT:

Have you any requests, Mr. Patterson?

Mr. PATTERSON:

I ask your honor to charge that if the jury find that there was broad daylight upon this transaction at the time of the accident, and that the small boat was perfectly visible without any artificial light they are at liberty to find that the absence of light did not contribute to this accident.

The COURT:

They may.

DEFENDANT'S COUNSEL:

Your honor will give me an exception to the last proposition you have charged, and also to the charge that if the pilot of the ferry-boat saw or failed to see when he might have seen the launch he was guilty of negligence.

Mr. PATTERSON:

I ask your honor to qualify that by saying when he might have seen, by the use of ordinary and reasonable care.

The COURT:

I understood myself to say so, I meant to say so.

DEFENDANT'S COUNSEL:

I except to proposition as altered.

Jury retire.

DEFENDANT'S COUNSEL:

Your honor charged that the jury would be entitled to
190 render a verdict for whatever damage they thought was right for the taking of the life of this man.

(Jury recalled by direction of the court.)

The COURT:

As you were leaving Judge Troy called my attention to the fact that on the question of damages I used the expression that you might give damages to this plaintiff for the taking of this life; I mean in the sense not by way of punishment against the company, but taken in the sense of the destruction of the life to the extent of the pecuniary money loss to the next of kin, the widow and two children, by reason of the death at the time. You are not to give anything by way of punitive damages, it is only actual money compensation to make good to the full value of the life any money loss to his next of kin.

DEFENDANT'S COUNSEL:

I take exception to the proposition as charged and altered.

Jury retire.

Verdict for plaintiff for $21,000.

Motion for a new trial on the minutes and on each of the grounds specified in section 999 of the Code of Civil Procedure except inadequacy of damages.

(Motion denied.)

Forty days' stay after notice of entry of judgment five per cent. allowance.

This case contains all the evidence given on the trial of this action.

191 Supreme Court.

KATIE J. MACMAHON, Administratrix of John Joseph MacMahon, Deceased, Plaintiff, Respondent,
against
THE BROOKLYN AND NEW YORK FERRY COMPANY, Defendant, Appellant.

CITY OF BROOKLYN, *County of Kings,* } *ss.:*

George Tompkins, being duly sworn, deposes and says he is managing attorney for James and Thomas H. Troy, attorneys for above-named defendant, appellant; that deponent was present on the trial of the action, and is familiar with all the proceedings had herein, and that no opinion was given by the court below upon the trial of the action or upon the motion for a new trial.

GEORGE TOMPKINS.

Sworn before me this 15th day of September, 1896.

EDW. H. STRICKLAND,
Commissioner of Deeds, City of Brooklyn.

192 It is hereby consented and agreed that the within printed case on appeal may be ordered on file, and filed as and for the original case on appeal as settled herein.

JAMES & THOMAS H. TROY,
Attorneys for Appellant.
CHARLES J. PATTERSON,
Attorney for Respondent.

It is so ordered.
Dated September 21st, 1896.

WILLIAM D. DICKEY,
Justice Supreme Court.

193 Supreme Court, Kings County.

KATIE J. MACMAHON, Administratrix of John Joseph MacMahon, Deceased, Plaintiff, Respondent,
against
THE BROOKLYN AND NEW YORK FERRY COMPANY, Defendant, Appellant.

Pursuant to section 3301 of the Code of Civil Procedure, we hereby stipulate that the foregoing are true copies of the original judgment-roll, notice of appeal and case on appeal as settled and filed in the above-entitled action in the office of the clerk of the county of Kings.
Dated September 21st, 1896.

JAMES & THOMAS H. TROY,
Attorneys for Defendant, Appellant.
CHARLES J. PATTERSON,
Attorney for Plaintiff, Respondent.

(Here follows diagram marked p. 194.)

195 PLAINTIFF'S EXHIBIT NO. 2.

July, 1895.

	Sandy Hook.				Governor's island.				Heil Gate ferry.			
	A. M.		P. M.		A. M.		P. M.		A. M.		P. M.	
	H. W.	L. W.	H. W.	L. W.	H. W.	L. W.	H. W.	L. W.	H. W.	L. W.	H. W.	L. W.
Sun. 21.	6.34	12.24	6.49	12.32	6.52	1.00	7.12	1.04	8.45	2.28	9.05	2.32

(Here follow diagrams marked pp. 196 & 197.)

198 At a term of the appellate division of the supreme court held in and for the second judicial department, at the city of Brooklyn, on the 20th day of November, 1896.

Present: Hon. Charles F. Brown, presiding justice.
" Edgar M. Cullen,
" Willard Bartlett,
" Edward W. Hatch,
" George B. Bradley, } Justices.

KATIE J. MACMAHON, Administratrix, &c., Respondent, *vs.* THE BROOKLYN AND NEW YORK FERRY COMPANY, Appellant. } Order of Affirmance on Appeal from Judgment.

The above-named The Brooklyn and New York Ferry Company, the defendant in this action, having appealed to the appellate division of the supreme court from a judgment of the supreme court entered in the office of the clerk of the county of Kings on the 18th day of April, 1896, and from an order made by said court denying a motion for a new trial therein, and the said appeal having been argued by Mr. James Troy, of counsel for the appellant, and by Mr. Charles J. Patterson, of counsel for the respondent, and due deliberation having been had thereon—

It is hereby ordered and adjudged that the judgment and order so appealed from be, and the same are hereby, unanimously affirmed, and the respondent recover of the appellant the costs of this appeal.

Enter.

C. F. BROWN, *P. J.*

199 Supreme Court, Appellate Division, Second Judicial Department.

CLERK'S OFFICE, BROOKLYN, N. Y.

I, John B. Byrne, clerk of the appellate division of the supreme court in the second judicial department, do hereby certify that the

foregoing is a copy of the order made by said court upon the appeal in the above-entitled action and entered in my office on the 20th day of November, 1896, and that the original case upon which said appeal was heard *are* hereunto annexed.

In witness whereof I have hereunto set my hand and
[SEAL.] affixed the seal of said court, at the city of Brooklyn, on the 20th day of November, 1896.

JOHN B. BYRNE, *Clerk.*

200 Supreme Court, Kings County.

KATIE J. MACMAHON, as Administratrix of the Goods, Chattels, and Credits of Joseph J. MacMahon, Deceased, Plaintiff, Respondent,

against

THE BROOKLYN AND NEW YORK FERRY COMPANY, Defendant, Appellant.

Judgment, November 23rd, 1896.

The appeal in this action having come on regularly to be heard before a term of the appellate division of this court, and the said court having ordered that the judgment and order appealed from be unanimously affirmed with costs to the respondent:

Now, on motion of Charles J. Patterson, attorney for plaintiff and respondent—

It is ordered that the judgment entered on the 18th day of April, 1896, in favor of the above-named plaintiff and respondent, Katie J. MacMahon, as administratrix of the goods, chattels, and credits of Joseph J. MacMahon, deceased, and against the defendant and appellant, The Brooklyn and New York Ferry Company, for the sum of twenty-three thousand one hundred and seventy-two and $\frac{65}{100}$ dollars, damages and costs, be, and the same hereby is, in all things affirmed.

And it is further adjudged that the plaintiff and respondent,
Katie J. MacMahon, as administratrix of the goods, chattels, and credits of Joseph J. MacMahon, do recover of the defendant
201 and appellant, The Brooklyn & New York Ferry Company, the sum of one hundred dollars and fifty-two cents, the costs of the said appeal.

JACOB WORTH, *Clerk.*

202 At a term of the appellate division of the supreme court of the State of New York, in the second judicial department of said State, held at the court-house, in the city of Brooklyn, on the 1st day of December, 1896.

Present: Hon. Charles F. Brown, presiding justice.
" Edgar M. Cullen,
" Willard Bartlett,
" Edward W. Hatch,
" George B. Bradley,
} justices.

KATIE J. MACMAHON, as Administratrix of the Goods, Chattels, and Credits of John Joseph MacMahon, Deceased,
against
THE BROOKLYN AND NEW YORK FERRY COMPANY.

The defendant and appellant, The Brooklyn and New York Ferry Company, having applied to this court under subdivision 2 of section 191 of the Code of Civil Procedure, as amended by chapter 559 of the Laws of 1896, for a certificate that, in its opinion, a question of law is involved which ought to be reviewed by the court of appeals, after hearing Messrs. James and Thomas H. Troy, of counsel for said The Brooklyn and New York Ferry Company, it is—

Ordered that said application and certificate be, and is hereby, refused.

On the suggestion of counsel for the appellant that they desire to make an application for such certificate to a judge of the court of appeals it is further ordered that all proceedings on or under
203 the judgment of affirmance aforesaid on the part of the plaintiff be, and are hereby, stayed for ten days from date of this order.

Enter.

C. F. BROWN, *P. J.*

Supreme Court, Appellate Division, Second Judicial Department.

CLERK'S OFFICE, BROOKLYN, N. Y.

I, John B. Byrne, clerk of the appellate division of the supreme court in the second judicial department, do hereby certify that the foregoing is a copy of the order made by said court upon the appeal in the above-entitled action and entered in my office on the first day of December, 1896.

In witness whereof I have hereunto set my hand and
[SEAL.] affixed the seal of said court, at the city of Brooklyn, this first day of December, 1896.

JOHN B. BYRNE, *Clerk.*

204 [Endorsed:] Supreme court, appellate division. Katie J. MacMahon, as administratrix, &c., against The Brooklyn and New York Ferry Company. Certified copy order refusing certificate. James & Thomas H. Troy, att'ys for appellant, Phenix bldg., 16 Court St., Brooklyn, N. Y. Filed Dec. 1st, 1896.

205 Supreme Court, County of Kings.

THE BROOKLYN AND NEW YORK FERRY COMPANY
against
KATIE J. MACMAHON, as Administratrix of the Goods, Chattels, and Credits of John Joseph MacMahon, Deceased.

STATE OF NEW YORK,
County of Kings, City of Brooklyn, } *ss.:*

George Tompkins, being duly sworn, deposes and says that he is an attorney and counsellor at law of the State of New York and

was and is managing attorney in the office of James and Thomas H. Troy, attorneys for the defendant herein in this action; that, acting for said attorneys, on the 2nd day of December, 1896, at the court of appeals, in the city of Albany, he duly applied for them as such attorneys to the several judges of the court of appeals of the State of New York to allow an appeal from the judgment of the appellate division of the supreme court in the second judicial department in this action, and said application on the 3rd day of December, 1896, was by each of said judges severally denied, and said judges severally refused to allow an appeal in said action from said judgment of the appellate division aforesaid and declined to make any record of such refusal as unnecessary other than by the communication hereto annexed.

GEORGE TOMPKINS.

Sworn to before me this 4th day of December, 1896.
EDW. H. STRICKLAND,
Com. of Deeds, City of Brooklyn.

206 COURT OF APPEALS, JUDGES' CHAMBERS,
ALBANY, *Dec.* 3, 1896.

GENTLEMEN: I am directed to notify you that the application for leave to appeal in the case of MacMahon *vs.* Brooklyn & New York Ferry Company has been submitted to each judge of the court of appeals and has been denied by each.

I return you per express today the papers in the case.

Very truly yours, A. S. BROLLEY,
Consultation Clerk.

Messrs. James & Thomas H. Troy, Phenix bldg., # 16 Court street, Brooklyn, N. Y.

207 At a special term of the supreme court held in and for the county of Kings, at the county court-house, in the city of Brooklyn, on the 9th day of December, 1896.

Present: Hon. William J. Osborne, justice.

THE BROOKLYN AND NEW YORK FERRY COMPANY
against
KATIE J. MACMAHON, as Administratrix of the Goods, Chattels, and Credits of John Joseph MacMahon, Deceased.

It appearing to the court from the record and proceedings herein that the judgment in this action was affirmed by the appellate division of the supreme court on the 23rd day of November, 1896, and judgment entered accordingly, and that an application was duly made by the defendant in said action to said appellate division for a certificate that in its opinion a question of law is involved which ought to be reviewed by the court of appeals, and that such certificate was refused by said court;

And it further appearing from the affidavit of George Tompkins, managing attorney in the office of the attorneys for the defendant

in said action, that, acting for said attorneys, on the 2nd day of December, 1896, at the court of appeals, in the city of Albany, he duly applied for them to the several judges of the court of appeals of the State of New York to allow an appeal from the judgment of the appellate division of the supreme court in the second judicial department in this action, and that said application was on the 3rd day of December, 1896, by each of said judges severally denied,
208 and that said judges severally refused to allow an appeal in said action from said judgment of the appellate division and declined to make any record of such refusal as unnecessary other than by the communication annexed to said affidavit:

Now, on motion of James and Thomas H. Troy, defendant's attorneys, it is—

Ordered that the affidavit aforesaid and the communication attached thereto be filed in the office of the clerk of this court, and that said clerk attach the same to the rerecord as a part thereof and as proof of the facts therein stated.

Enter.

W. J. O.

Enter in Kings county.
Granted Dec. 9, 1896.
JACOB WORTH, *Clerk.*

209 [Endorsed:] Supreme court, Kings county. The Brooklyn and New York Ferry Company against Katie J. MacMahon, administratrix of the goods, chattels, and credits of John Joseph MacMahon, deceased. Affidavit, &c., showing refusal to allow appeal and order making same part of record. James & Thomas H. Troy, att'ys for appellant, # 16 Court St., Phenix bldg., Brooklyn, N. Y. Filed Dec. 9, 1896.

210 Supreme Court, Appellate Division, Second Department.

KATIE J. MACMAHON, as Administratrix, etc., of John Joseph MacMahon, Deceased, Respondent,
against
THE BROOKLYN AND NEW YORK FERRY COMPANY, Appellant.

Appeal from judgment entered on verdict of jury at Kings trial term and from an order denying motion made on the minutes for a new trial.

James and Thomas H. Troy, for appellant.
Charles J. Patterson, for respondent.

BRADLEY, *J.:*

On the evening of July 21st, 1895, the plaintiff's intestate, with John Williamson and Charles L. McCann, was in a steam-launch with which the defendant's ferry-boat collided in the East river, and his death by drowning resulted from the collision. The plaintiff charges that the accident was attributable solely to the negligence

of the defendant. Much and some conflicting evidence was introduced as to the circumstances and attending conditions under which it occurred bearing upon the issues presented for trial. Those three gentlemen embarked in the launch at the Wallabout basin and proceeded up the Brooklyn side of East river to a slip at the foot of South Second street, passing several ferry slips, including that of the Twenty-third Street ferry. After remaining there for a
211 time they proceeded to return. There was a strong flood tide, which retarted the progress of the launch, so that it proceeded very slowly. It was a small boat, evidently having weak motive power. When it came near to the Twenty-third Street ferry slip (its then particular locality does not very clearly appear) Williamson testified that he saw the ferry-boat distant four hundred and fifty feet, coming down the river, headed towards the Brooklyn shore, and at some point below that slip until after it came within two hundred feet of the launch; that when at that distance the launch whistle was blown and blown repeatedly. The course of the ferry-boat very shortly after was turned in the direction of the Twenty-third Street ferry slip. The launch was in front of it, and thereupon Williamson ineffectually attempted to reverse the engine and go with the tide out of the way. Failing in that, he directed the use of the hand oars, which were brought into requisition for a momentary or brief space of time, when the ferry-boat came onto the launch. Williamson and McCann were taken aboard the ferry-boat.

An important fact bearing upon the question of the alleged negligence of the defendant was whether or not it was daylight at the time the ferry-boat approached the place of the occurrence. There was a marked conflict in the testimony of witnesses on that subject. That of the pilot on the ferry-boat was to the effect that, although he heard the whistle, he did not see the launch until he came within fifty feet of it, and that up to that time he had seen nothing to deter him from proceeding into the slip by reason of the darkness; that if he had seen it at two hundred feet from the slip the course of the ferry-boat was such that he could have avoided the collision. Other witnesses testified that it was cloudy and had then become dark or partially dark, so as to render the view of objects at much distance dependent upon artificial light; and in support of this fact
212 evidence on the part of the defence was given tending to prove that it was eight o'clock and after. The sun set on that day at twenty-six minutes past seven o'clock. On the part of the plaintiff evidence was given to the effect that at the time of the accident it was not later than half past seven o'clock, and that it was daylight—"perfectly clear daylight." Some of the passengers on the ferry-boat testified that the launch was plainly visible and seen by them when the ferry-boat was more than two hundred feet from it, and some others who were on the Brooklyn shore and much farther than that from the launch testified to the same effect. In view of the evidence, the question whether the pilot of the ferry-boat ought to have seen the launch when its whistle was first blown, if not before, was one of fact for the jury, as was also that of neg-

ligence of the defendant in consequence of his failure or omission to observe the launch and the danger of its occupants if the ferry-boat had proceeded into the slip and to avoid the collision and the consequences which followed.

It is urged with much force by the counsel for the defendant that the plaintiff failed to prove that the death of the plaintiff's intestate was not attributable to the negligence of the persons on the launch or of some of them, or that such negligence did not contribute to the accident. It may be that they were so situated when the ferry-boat was seen four hundred and fifty feet away that if they had supposed that it was destined for the slip which it entered they may have avoided it, although there is some evidence which may be construed to import the contrary; but it may now be assumed upon the evidence that they did not know that the ferry-boat was on its way to that slip, and that they were led to suppose she was not, because her bow was headed towards some place below that slip on the Brooklyn side of the river. The pilot says the
213 course of the boat was not in line with slip, but was towards the navy yard, below, until within two hundred feet of the slip, and then turned to port towards it, which was his usual method of doing it, and he then saw nothing in the way. They had no lantern on the launch. There was one on her when they started up the river, but it had been lost. None, however, was necessary at the time in question if it was then clear daylight. Those persons in the launch were not expert navigators. Neither of them had before had much experience in running a boat. Williamson was an engineer accustomed to running engines. The engine and side-wheel propellers of the launch were somewhat peculiar. It was a new design of his own. He prior to this time had run the boat some on the river, but not in that locality. This was a pleasure trip. He ran the engine and MacMahon steered with the tiller at the stern. McCann occupied a seat in the bow. It is said that they had failed to observe the requirements of the Federal statutes relating to navigation in respect to licensed skill requisite and in other respects. These are matters entitled to consideration, but default in that regard does not necessarily under all circumstances impute to a party contributory negligence and deny to him relief for injury resulting from the negligence of another, nor will a vessel be excused if it fail to adopt reasonably precautionary means to avoid collision with another, although by the rules of navigation she would otherwise have the right to keep her course. If, therefore, by the exercise of reasonable care the running against the launch may have been avoided by the pilot of the ferry-boat, the defendant was not relieved from liability by the mere fact that those rules were not observed in the means or method of navigation of the launch, although the former was in her usual course and as she otherwise would have been entitled to run. The "Sunnyside" (91 U. S., 208); Cooper *v.* E. Transportation Co. (75 N. Y., 116). It is true that those in the launch knew that ferry-boats were going
214 from and coming into the slips on Brooklyn side every few

minutes, and, as a boat had recently gone out of the Twenty-third Street ferry slip, they had reason to suppose that another would shortly return to it, and when they got outside the pier to go down the river they must have observed that the tide was so strong that it was difficult for the small boat to run against it, at all events, with much headway. If dark or less than twilight it would seem, without any artificial light on the boat, to have been quite hazardous for them to proceed with it; but, assuming, as we may, upon the findings of the jury that it was daylight, they were entitled, in addition to their own efforts, to the reasonable care and precaution of the ferry-boat pilots for protection against danger from them. When the ferry-boat veered to port and thus changed its course to proceed into the slip the launch was in front of it, and, the reversal of her engine not being available to push her back with the tide, she became apparently helpless for her own protection against the approaching ferry-boat—at least, such conclusion was permitted by the evidence. It may have been by the want of reasonable precaution that the launch got into the position and place in which it was at that time, and those having her in charge may not have exercised the best judgment in the attempt to get her away from the course to the slip after the ferry-boat had turned in that direction, but the fault in navigation of the launch which placed her in that relative position did not nor did such error in judgment necessarily render the accident attributable to the contributory negligence of those in her. The situation may be viewed as it existed just before and at the time the ferry-boat turned its course to the slip. Her pilot had no right to run into the launch if he saw and could reasonably have avoided her, nor was the defendant necessarily by the circumstances before mentioned relieved from the charge that its negligence was solely the cause of
215 the calamity and from liability as the consequence if its pilot by the exercise of reasonable care would have seen and avoided the collision which resulted in the death of the plaintiff's intestate.

Austin *v.* N. J. Steamboat Co., 43 N. Y., 75.
Hoffman *v.* Union F. Co., 7 *id.*, 176.
S. C., 68 *id.*, 385.
Blanchard *v.* N. J. Steamboat Co., 59 *id.*, 292.
Harris *v.* Uebelhoer, 75 *id.*, 169.
Minerly *v.* Union Ferry Co., 56 Hun., 113.

The examination of the record leads to the conclusion that the jury were permitted to find that the facts essential to the plaintiff's recovery had the support of the weight of the evidence, and therefore the motion to dismiss the complaint was properly denied.

The defendant's counsel complains of enquiries made by the court of the pilot of the ferry-boat while he was on the stand as a witness to test his power of vision. This witness having stated that he was sixty-one years of age and could at the time of the trial see "all over" and "further than some young men," his attention was called by the court to some printed objects and figure- in the court-

room and enquiries made of him to test his eyesight, to which no objection was taken. His ability or inability to see objects at that time—nine months after the occurrence in question—was not a relevant fact unless his eyesight was as good at the later as at the other time. The import of the testimony of the witness which led to this further enquiry by the court was that his power of vision was unimpaired and remarkably good at the time he was testifying. We think there was no error to the prejudice of the defendant in the examination of the witness by the justice presiding at the trial.

The case seems to have been fairly submitted to the jury
216 and none of the exceptions to charge as made were well taken.

The verdict was quite large in amount, but in view of the age, character, habits, and business capacity of the deceased, as they appeared by the evidence to have been, of the age of his children, and of the income derived from his services and business occupation, it cannot well be seen that the damages were excessive or more than the jury were warranted in finding that his widow and next of kin who were dependent upon him for their support and education had sustained pecuniarily by the death of the plaintiff's intestate.

The judgment and order should be affirmed.

Supreme Court, Appellate Division, Second Judicial Department.

CLERK'S OFFICE, BROOKLYN, N. Y.

I, John B. Byrne, clerk of the appellate division of the supreme court in the second judicial department, do hereby certify that the foregoing is a copy of the opinion handed down by said court upon the appeal in the above-entitled action and filed in my office on the 20th day of November, 1896.

In witness whereof I have hereunto set my hand and
[SEAL.] affixed the seal of said court, at the city of Brooklyn, on the 9th day of December, 1896.

JOHN B. BYRNE, *Clerk.*

217 [Endorsed:] Supreme court, appellate division. Katie J. MacMahon, as administratrix, &c., against The Brooklyn and New York Ferry Company. Opinion.

218 Supreme Court of the United States.

THE BROOKLYN AND NEW YORK FERRY COMPANY, Plaintiff in Error,
against
KATIE J. MACMAHON, Administratrix of the Goods, Chattels, and Credits of John Joseph MacMahon, Deceased, Defendant in Error.

STATE OF NEW YORK, } ss:
County of Kings, }

I, Jacob Worth, county clerk of Kings county, in the State of New York, and clerk of the supreme court of said State in and for

the said county of Kings, in the second judicial department of said State, do hereby certify, in obedience to the command of the writ of error duly issued herein by the Supreme Court of the United States, directed "to the said supreme court of the State of New York, in the second judicial department of said State, and the judges thereof in said department," as follows:

That the original record and proceedings mentioned in said writ of error and all things concerning the same are on file in my office, and I am by the laws of the said State as such clerk as aforesaid the custodian thereof.

That on the 9th day of December, 1896, the said original writ of error was duly filed in my office as such clerk by the plaintiff in error, and at the same time the original petition for said writ, the assignment of errors, and the supersedeas bond, duly approved, were also filed therein; that thereafter and on the same day the original citation directed to the defendant in error and proof of service
219 thereof were also filed with me in said office, and I hereby return the said original writ as therein commanded, with the citation and proof of service thereof aforesaid, together with the petition for said writ, the assignment of errors, and a copy of the supersedeas bond aforesaid; that the following pages, numbered 1 to 193, inclusive, together with the index thereto and exhibits marked respectively "Plaintiff's Exhibit No. 1," "Plaintiff's Exhibit No. 2," "Defendant's Exhibit A," and "Defendant's Exhibit B" and addenda of order and judgment of affirmance by the appellate division of the supreme court of the second judicial department of said State, and the order of said last-mentioned court refusing a certificate, that in its opinion a question of law was involved in said action which ought to be reviewed by the court of appeals of said State, and the order of the supreme court duly made in said action, together with the affidavit and communication therein referred to upon which it was made, showing the refusal of the several judges of the court of appeals of said State to allow an appeal in said action, and the opinion of the said appellate division of the supreme court on affirming the judgment aforesaid, and that the same constitute and are a true and complete transcript and transfer of the record and proceedings had in said supreme court and in the appellate division thereof aforesaid, and the whole of said record, in the suit of Katie J. MacMahon, administratrix of the goods, chattels, and credits of John Joseph MacMahon, deceased, now and here defendant in error, against The Brooklyn and New York Ferry Company, now and here plaintiff in error, as fully and completely as the same is and remains of record and on file in my office as aforesaid. I further certify that at the time of filing the original writ of error in my office the plaintiff in error lodged with me therein a true copy of said writ for the defendant in error, and on the same day, to wit, the 9th day of December, 1896, I duly delivered the same to Charles J. Patterson, Esq., the attorney
220 for the said Katie J. MacMahon in said action, as such attorney as aforesaid.

In testimony whereof I have hereunto set my hand and caused

the seal of said court to be hereunto affixed, at the city of Brooklyn, in the county of Kings and State aforesaid, this nineteenth day of December, in the year one thousand eight hundred and ninety-six, and of the Independence of the United States the one hundred and twenty-first.

[Seal Kings County.]

JACOB WORTH, *Clerk.*

[Endorsed:] The Supreme Court of the United States. The Brooklyn and New York Ferry Co., pl'ff in error, ag'st Katie J. MacMahon, as adm'x, &c., of John Joseph MacMahon, dec'd. Return of supreme court Kings Co. to writ of error.

Endorsed on cover: Case No. 16,460. New York supreme court. Term No., 681. The Brooklyn and New York Ferry Company, plaintiff in error, *vs.* Katie J. MacMahon, administratrix of the goods, chattels, & credits of John Joseph MacMahon, deceased. Filed December 31, 1896.

Office Supreme Court, U. S.
FILED.
FEB 17 1897
JAMES H. MCKENNEY,
CLERK.

166-718

BRIEF FOR DEFENDANT IN ERROR SUPPORTING A MOTION TO DISMISS THE WRIT OF ERROR FOR WANT OF JURISDICTION, OR TO AFFIRM FOR OBVIOUS WANT OF MERIT.

Supreme Court of the United States.

OCTOBER TERM, 1896.

No. 681.

THE BROOKLYN AND NEW YORK FERRY COMPANY,

Plaintiff in Error,

vs.

KATIE J. MacMAHON, as Administratrix, &c., of John J. MacMahon, deceased,

Defendant in Error.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

CHARLES J. PATTERSON,
Counsel for Defendant in Error,
26 COURT STREET,
Brooklyn, N. Y.

C. G. Burgoyne, Walker and Centre Streets, N. Y.—1897.

Supreme Court of the United States.

OCTOBER TERM, 1896. No. 681.

THE BROOKLYN AND NEW YORK FERRY COMPANY,
Plaintiff in Error

vs.

KATIE J. MACMAHON, as Administratrix, &c.,
of John J. MacMahon, deceased,
Defendant in Error.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

Brief for defendant in error supporting a motion to dismiss the writ of error for want of jurisdiction or to affirm for obvious want of merit.

In this brief the references are to both top pagings and marginal pagings in the record. The marginal pagings are enclosed in brackets, thus: [ ].

Position of the Case.

This action was brought in the Supreme Court of the State of New York to recover damages on account of the negligence of the negligence of the plaintiff in error in causing the death of John J. MacMahon. The cause was tried before the Court and jury and a verdict was rendered for plaintiff for $21,000. A motion for a new trial was made by plaintiff in error and was denied by the trial Justice (p. 15 [9]). From the judgment entered on the verdict and from the order denying the new trial the plaintiff in error appealed to the Appellate Division of the Supreme Court of the State of New York in the Second Department (p. 16 [10]), where the judgment and order were affirmed (pp. 126, 127 [198, 199 to 201]). Plaintiff in error then sought to obtain a certificate to enable it to appeal to

the Court of Appeals of the State of New York, but this was refused by the Supreme Court (p. 128 [203]), and also by all the Judges of the Court of Appeals (pp. 128, 129 [205, 206]). Then the plaintiff in error sued out a writ of error in this Court upon the ground that in the State Courts it had been refused a right, claimed or set up under the laws of the United States. The defendant in error now moves to dismiss the writ of error for want of jurisdiction, and she also makes an alternative motion to affirm, because the question (if any) is so frivolous as to need no further argument.

FACTS.

On the evening of July 21st, 1895, about sunset, a small steam launch was run down in the East River by defendant's ferryboat. In consequence John J. MacMahon, one of the occupants of the launch, was thrown into the water and drowned (p. 17 [12]). The evidence was conflicting as to the time at which the accident happened. The sun set at 7:26 P. M. (p. 67 [94), and the plaintiff's evidence showed that the accident happened at about this time (Record, pp. 17 [11], 18 [13], 22 [20], 37 [45], 46 [60]). One witness looked at his watch a few minutes after the accident, and noted that when he looked it was half-past seven o'clock (p. 46 [60]), and a great many witnesses testified that when the collision took place it was broad daylight, and that one could then easily see the launch across the river (Record, p. 24 [23], 37 [45], 44 [57], 45 [57], 45 [58], 46 [59], 48 [62], 50 [66], 53 [71]). The ferryboat pilot testified that the accident happened about eight o'clock, upon the last trip that he made from New York to Brooklyn, that evening (p. 81 [118]). He admitted that when first called upon the Coroner's inquest, a few days after the collision, he had testified that the accident happened upon the next trip before the last that evening, and that it was when returning upon his last trip that he first learned that a man had been lost by the collision (pp. 88 [129], 86, 87 [126, 127]). He said that in giving this sworn testimony before the Coroner he had made a mistake, which he proceeded to correct upon a subsequent day, to which the inquest was adjourned (pp. 87 [127], 88 [129]). If the first evidence given by the ferryboat pilot at the inquest was true, and the accident did happen on the trip next before the last, it must have happened before 7:24 P. M., and, consequently, before sundown (p. 87 [128]).

The launch was about 22 feet long by 5 feet 3 inches wide (p. 22 [19]). She had side wheels and was painted white, with a white awning over her stern (p. 22 [19]). She was decked for about

three feet over her bow and for five inches at each side, but otherwise was an open boat (p. 57 [78]). The machinery was about amidships (p. 57 [78]), and she was steered by a tiller (pp. 58 [80]), 65 [91]). Three men were in the boat—Williamson, who owned her (Record, p. 61 [85]), and McCann and MacMahon, who were taking a pleasure sail at his invitation (pp. 63 [88], 26 [27], 22 [20]). McCann was seated in the bow, Williamson was amidships attending to the machinery, and McMahon was in the stern steering with the tiller (pp. 22 [20], 27 [27], 58 [80]). These three men had left the Navy Yard in the launch about 5:30 o'clock (pp. 58 [79], 22 [20]), and went north on the river to the foot of South Second street on the Brooklyn side. After waiting a while they turned to go back to the Navy Yard and moved south against a strong flood tide, making but two and a half or three miles an hour (pp. 22 [20], 58 [79], 58 [80], 28, 29 [30]). The boat was passing down the river about 50 or 75 feet, or perhaps half a block from the outer lines of the piers (p. 22 [20]). Keeping this course she must pass a number of slips used by defendant for its ferries. A glance at the map opposite page 124 will show them. The northernmost slips are used for the ferry at Twenty-third street, New York, the middle ones for the Grand Street Ferry, and the southern ones for the Roosevelt street boats (p. 61 [84], see map opp. p. 124). When the launch was at or near the Twenty-third street slip, the defendant's ferryboat, a large, powerful steamer 170 feet long (p. 67 [95]), was out in the stream about 450 feet distant going fast (pp. 58 [80], 67 [95], 71 [102], 23 [22], 39 [48], 41 [52]). She was coming to Brooklyn, but was pointed south of the Twenty-third street slip where the launch was. When the ferryboat was about 200 feet from the launch the latter, being in plain sight from the ferryboat, sounded her steam whistle, which was distinctly heard by the ferryboat passengers (pp. 18 [14], 38 [45], 41 [52], 67 [95], 71, 72 [102]), and also by the ferryboat pilot (pp. 83 [122], 88 [130]). When the whistle was sounded and the boats were 200 feet apart the ferryboat was not pointed at the launch (pp. 58, 59 [80, 81], 67 [95], 68 [96], 72 [102], 23 [21]). She was pointed, her pilot says, at the Navy Yard (pp. 88, 89 [130], 117 [178], 117 [179]), which is south of all the ferry slips (see map, p. 124), and other witnesses say at the slips to the south of the Twenty-third street slip (pp. 58 [80], 67 [95], 68 [96], 68, 69 [97], 72 [102]), where the launch was. If the ferryboat had but kept this course there would have been no collision. Instead of doing this, the pilot on the ferryboat starboarded his helm and turned his bow to port, thus turning his course to the left and bringing his stem towards the launch which was then about midway

across the Twenty-third street slip (pp. 59 [81], 68 [96], 72 [102], 88, 89 [130], 117 [178], 117 [179]). Up to the time the ferryboat made this turn, the men in the launch did not know she was bound for the Twenty-third street slip (pp. 60 [83], 66 [93], 32 [36], 36 [43], 37 [44]). As soon as the ferryboat made this turn to port, Williamson immediately stopped the engine on the launch and tried to get the machinery into stern gear to reverse so as to back the launch out of the way (p. 59 [81]), and he called to McCann to get out the oars and back (p. 59 [82]). This was manifestly the best thing to do as the tide would help to move the launch back. McCann got the oars out and pulled two or three strokes (p. 24 [22]), but before the launch could be got out of the way the ferryboat came on and her stem struck the launch on the starboard side near the centre (pp. 17 [12], 24 [23], 38 [46], 42 [52], 45 [58]), and stove her side in (pp. 24 [23], 60 [83]). The shock of the collision threw McMahon into the water and he was not again seen till his lifeless body was picked up a few days afterwards in Newtown Creek (pp. 47 [61], 60 [83]). Williamson and McCann clambered upon the ferryboat with the aid of the passengers and were saved (p. 24 [23]). Some of the witnesses say the ferryboat did not check her speed till the collision occurred (pp. 38 [45], 53 [71], 68 [96], 72 [103]), while others say that when the boats were fifty to twenty-five feet apart the speed was slightly but not materially reduced, and then the ferryboat came on and struck the launch (pp. 42 [52], 45 [58], 50 [66]). At any rate she continued on her way into the Twenty-third street slip, for which she was bound, and the launch went under her port side (pp. 17 [12], 24 [23], 38 [47], 42 [53], 53 [71], 72 [103]).

The ferryboat pilot admitted that when 200 feet away from the launch his bow was pointed at the Navy Yard, and that all he had to do at that time to avoid a collision was to keep up his course and speed. He admitted that he changed his course to port, and that this was what caused the collision, and also that the change in the ferryboat's course was made after he heard the launch's whistle (pp. 88, 89 [130], 117 [178], 117 [179]). He also said that if the accident happened in daylight he was in fault (p. 116 [177]). His only excuse was the alleged darkness, which was fully met and dissipated by the evidence of the plaintiff's witnesses that it was perfectly clear daylight when the collision occurred (pp. 17 [11], 18 [13], 22 [20], 37 [45], 46 [60]), and also by the most suspicious fact that the pilot, when he was first examined before the Coroner, testified that the accident happened on the trip next before his last that evening, which would bring it into broad daylight, and on a subsequent

evening, changed his testimony by saying it happened on his last trip page 88 [129], 86 [126, 127].

There was no light upon the launch at the time of the accident, and the Court charged, at defendant's request, that the deceased and his associates were negligent in not exhibiting a light on the boat, as required by the laws of the United States, and if such negligence contributed to the accident the plaintiff could not recover (p. 123 [188]). But he said that if the jury found that there was broad daylight upon the transaction at the time of the accident, and that the small boat was perfectly visible without any artificial light, the jury were at liberty to find that the absence of light did not contribute to the accident (p. 123 [189]). The Court had already said (p. 119 [181]) that the disregard of statutory obligations would not bar the action if it appeared that such disregard did not directly or indirectly contribute to the accident.

POINTS.

I.

The supposed Federal questions were decided in favor of the plaintiff in error in the State Courts. The case was decided against it upon a non-Federal question sufficiently broad to sustain the judgment by itself.

At the request of the counsel for plaintiff in error, the Court upon the trial instructed the jury as follows (Record, p. 123 [188]):

"That the deceased and his associates in the boat were negligent in not exhibiting a light on the boat, as required by the laws of the United States, and if such negligence contributed to the accident the plaintiff cannot recover."

To find for the plaintiff, the jury must have decided that the absence of a light upon the launch did not contribute to the accident. The fact that Williamson had no license as a pilot or engineer appeared (p. 57 [77]). But it did not appear whether or no McMahon or McCann had a license. The boat had been inspected by the Federal authorities, but not since Williamson got her in 1891 (p. 66 [m. p. 92]). But the matter of the license or the inspection was

unimportant, because there was and could be no suggestion on the trial that the want of these things had contributed to the accident.

It is a well-settled rule that the disregard of statutory provisions relating to navigation by one who is injured will not bar a recovery in a case of this character, provided it be established that such disregard did not in any manner contribute to the injury.

Hoffman vs. Union Ferry Co., 47 N. Y., 176; same case, 68 N. Y., 385.
Blanchard vs. N. J. Steamboat Co., 59 N. Y., 292.
The Pennsylvania, 19 Wallace, 136.

The earlier cases are collected in Parsons on Shipping and Admiralty, Vol. 1, page 595, Sec. 3, where the rule is stated in the following language:

"If a vessel disregards the provisions of a statute, the burden is on her to show, in case of a collision, that the accident was not owing to such neglect; but, if it is shown that the breach of the statutory provision did not in any degree contribute to the collision, the violation of the statute will have no effect."

One who is violating a statute is not an outlaw so that any one may carelessly injure or kill him with impunity.

Carroll vs. S. I. R. R., 58 N. Y., 126.
Philada., W. & B. R. R. vs. P. & H. Co., 23 Howard U. S., 209.
Chamberlain vs. Ward, 21 Howard U. S., 567.
The Sunnyside, 91 U. S., at pp. 214, 215, 224.

The law looks, not to the remote, but to the immediate or proximate cause of an accident, and if the negligence of a person injured be not one of the proximate causes, it is not deemed contributory so as to defeat his recovery. No matter how negligent one may be in placing himself or his property in a situation which is exposed to danger, if, after he is so exposed, another has fair opportunity to see his plight and avoid injuring him, such other person must do so or be held liable in damages. The negligence of the person who had exposed himself or his property carelessly will furnish no excuse to one who, after the peril was apparent to ordinary observation, negligently injures him.

Radley vs. L. & N. W. Ry. Co., L. R., 1 App. Cas., 754.
Same case below, L. R., 9 Exch., 71; 10 *Id.*, 100.
Davies vs. Mann, 10 Meeson & Welsby, 545.
Tuff vs. Warman, 5 Com. B., N. S., 573.
Austin vs. N. J. S. B. Co., 43 N. Y., 75.
Hoffman vs. Un. F. Co., 47 N. Y., 176.
Same case, 68 N. Y., 385.
Minerly vs. Union Ferry Co., 56 Hun, 113.

Cases applying this doctrine are collected in great profusion in Shearman & Redfield on Negligence, Vol. 1, Section 99 (Fourth Edition), where it is said that the rule in Davies vs. Mann (10 M. & W., 545) is no longer disputed in this country in any Court of last resort.

A good statement of the rule is found in the Quarterly Law Review, Vol. II., page 507 (1886):

"The party who last has a clear opportunity of avoiding the accident, notwithstanding the negligence of his opponent, is considered solely responsible for it."

The principle, stated in a little different form, has been frequently applied to permit recoveries in cases where persons have been injured while driving on the wrong side of the road in violation of statute provisions.

Randolph vs. O'Riordan, 155 Mass., 331.
Smith vs. Conway, 121 Mass., 216.
Damon vs. Scituate, 119 Mass., 66.
Spofford vs. Harlow, 85 Mass., 176.
O'Neill vs. Town of E. W., 63 Conn., 150.
Baker vs. Portland, 58 Me., 199.
Bigelow vs. Reed, 51 Me., 225.
Palmer vs. Palmer, 11 Me., 338.
Reipper vs. Elting, 89 Iowa, 82, 90.
Quinn vs. O'Keefe, 9 App. Div. N. Y. Supreme Ct., 68.

It seems, therefore, to be plain that the fact that those in the launch had violated the United States statutes was not necessarily decisive of the case. Behind that lay the question whether such violation had contributed to the collision. This latter was not a Federal question, but a question of fact, which it was the exclusive right of the State courts to determine. To ascertain from the evidence what was and what was not one of the proximate causes of the accident was incidental to the ordinary administration of justice, and did not require the consideration or examination of any Federal subject; and this Court will not, upon a writ of error, review the decision of the State Court upon such matter of fact.

Dower vs. Richards, 151 U. S., 658, 663, &c.
Israel vs. Arthur, 152 U. S., 355.

The jury have found that, although the launch may have violated the United States statutes, such violation did not in any manner contribute to the collision. The point of Federal law was decided by the Court in favor of the plaintiff in error, but the jury found facts which rendered the point unimportant in the final disposition of the case.

The decision that the violation of the Federal laws did not contribute to the accident being upon a point non-Federal in character, and being sufficiently broad and independent to support the judgment rendered in the State Court, this Court is without jurisdiction, and should dismiss the writ of error.

Seneca Nation vs. Christy, 162 U. S., 283.
Rutland R. R. Co. vs. Cent. Vt. R. R., 159 U. S., 630.
Eustes vs. Bolles, 150 U. S., 361.
Delaware Co. vs. Reybold, 142 U. S., 636.
Walter A. Wood Co. vs. Skinner, 139 U. S., 397.
Beaupre vs. Noyes, 138 U. S., 397.
Jenkins vs. Lowenthal, 110 U. S., 222.
Murdock vs. Memphis, 20 Wall., 590.

This Court will not question or criticise the correctness of the conclusion of the State Court, that the disregard of the statutes did not contribute to the accident. The point being non-Federal the question is not open here.

Brooks vs. Missouri, 124 U. S., 394.
Choteau vs. Gibson, 111 U. S., 200.
Adams vs. Burlington R. R., 112 U. S., 123, 126, 127.
Chapman vs. Goodnow, 123 U. S., 540, 543.

II.

There was no right denied to the plaintiff in error in the State Courts which it had claimed under the Federal laws.

The only times upon the trial that the counsel for the plaintiff in error referred, directly or indirectly, to any Federal statutes was when he asked the Court to instruct the jury upon the matters found at page 123 [188, 189] of the record. The Court gave the instructions referred to, and thus decided in favor of the right claimed under the Federal statutes. The mere fact that a Federal question is involved and the Court decides in favor of the right claimed under the Federal law confers no jurisdiction here.

Missouri vs. Ariadno, 138 U. S., 496.

The point that the action should be dismissed or defeated because the launch violated the Federal statutes was nowhere taken on the trial. It was not raised by the motion to dismiss the com-

plaint which was based upon the following grounds only. Record, page 75 [107]:

"1st. That the evidence does not show any negligence on the "part of the defendant, its agents or servants which resulted in the "death of the plaintiff's intestate.

"2d. That the evidence shows that the death of the plaintiff's "intestate was caused solely by his own negligence or by such negli- "gence on his part as contributed thereto.

"3d. That the plaintiff's intestate and his associates in the joint "use, management and navigation of the boat upon the occasion in "question, and in the use, management and operation thereof, were "culpably careless and negligent and that the accident and death of "the plaintiff's intestate were, and each of them was, occasioned "thereby, or such carelessness and negligence contributed thereto.

"4th. That such carelessness and negligence on the part of the "plaintiff's intestate and his associates, or of any one of them, is "legally attributable to all and each of them individually, including "the plaintiff's intestate, and must be so regarded in this action, "and whether such carelessness and negligence was the sole cause "of such accident and death, or merely contributed thereto, the "plaintiff cannot recover."

These grounds do not directly or by necessary intendment raise the question that the launch had vio'ated the United States laws, and that such violation contributed to the accident. They did not invite the Court to consider any such subject. but simply raised the question whether under the general principles of jurisprudence the defendant was entitled to a nonsuit. The contributory negligence suggested by the grounds of the motion is contributory negligence in fact and not because of any violation of Federal statutes. So far as the record discloses such statutes had not been mentioned up to that time in the trial and were not mentioned or referred to upon that motion.

There are a few lines in the opinion of the Appellate Division indicating that the matter of Federal statutes was discussed in that Court. The Court say: "It is said that they had failed to observe the "requirements of the Federal statutes relating to navigation in re- "spect to licensed skill requisite, and in other respects. These are "matters entitled to consideration, but default in that regard does "not necessarily, under all circumstances, impute to a party con- "tributory negligence and deny to him relief for injury resulting from "the negligence of another (Record, p. 132 [213])."

In order to understand why the Appellate Division should thus deal with this question, which is not raised by exception at the trial, it

is necessary to understand the character of the review allowed in that Court.

The Appellate Division of the Supreme Court is a tribunal created by the New York State Constitution of 1894, and succeeds to the powers of the General Term under the following provisions of the Constitution:

"The Appellate Division shall have the jurisdiction now exercised by the Supreme Court at its General Terms."

Const., Art. 6, Sec. 2.

Prior decisions applicable to General Terms are therefore now applicable to the Appellate Division.

In this case there were two appeals before the Appellate Division, one from the order denying a new trial on the Judge's minutes and the other from the judgment (p. 15 [10]). On the appeal from the order denying the new trial the Appellate Division had a discretionary power to grant a new trial on the general merits irrespective of any exception.

Standard Oil Co. vs. Amazon Ins. Co., 79 N. Y., 506.
Hamilton vs. 3d Av. R. R., 53 N. Y., 25, 27.

But the exercise of this discretionary power is not reviewable in the Court of Appeals.

Harris vs. Burdett, 73 N. Y., 136.

Upon the appeal from the judgment the Appellate Division acts strictly as a Court of legal review to determine the validity of the exceptions taken on the trial.

Matthews vs. Mayberg, 63 N. Y., 656.
Boos vs. World M. Ins. Co., 64 N. Y., 236.

Both appeals in this case were disposed of in one opinion, and for the purposes of its discretionary power over the verdict, the Court dealt with some questions not raised by exception and among them was this matter of the Federal Statutes.

That part of the decision of the Appellate Division which affirms the order denying the new trial is not brought into this Court for review by the writ of error. This Court does not review the exercise of discretion, nor does the writ of error bring up the order refusing a new trial.

Van Stone vs. Stillwell, 142 U. S., 128.
Wilson vs. Everett, 139 U. S., 616.
Crumpton vs. U. S., 138 U. S., 361, 365.
Moore vs. U. S., 150 U. S., 57.
Bucklin vs. U. S., No. 2, 159 U. S., 682.

The only part of the decision of the Appellate Division reviewable here is their action upon the appeal from the judgment, and as upon that appeal they were limited strictly to a consideration of the exceptions taken on the trial (63 N. Y., 656 ; 64 N. Y., 236), so this Court in its review is limited to such exceptions. And a point not raised by proper exception on the trial cannot be considered here in support of the jurisdiction.

Morrison vs. Watson, 154 U. S., 111, 115.
Spiess vs. Illinois, 123 U. S., 131, 181.
Brooks vs. Missouri, 124 U. S., 394.
Chapman vs. Bradshaw, 128 U. S., 132, 134.
Brown vs. Mass., 144 U. S., 573.

The Courts of New York hold that a ground not stated in a motion to dismiss cannot be considered on appeal if it would have been possible to obviate such ground by further evidence.

Haines vs. N. Y. Central R. R., 145 N. Y., 235.

Here if the point had been raised that the Federal Statutes were violated further evidence might have been given to show either that they had not been violated, or if they had been, that such violation did not contribute to the accident. Therefore, the violation of the Federal Statutes as a ground of non-suit was not before the Appellate Division on the appeal from the judgment because not fairly raised by exception and so is not here for review. The right of the appellant to raise that question in the Appellate Division for the purposes of appealing to its discretionary power over the verdict is not such right as would preserve the question for review here. Hence, the case falls fairly within the previous decisions of this Court holding that where the record suggests no Federal question the Court will not look into the opinion to support the jurisdiction.

Otis vs. Oregon SS. Co., 116 N. Y., 548.
Moore vs. Mississippi, 21 Wallace, 631, 639.

The difficulty about accepting the opinion as a guide upon the matter of jurisdiction is that it need not deal with the rights of the appellant as limited strictly by its exceptions, and this Court must deal with the subject in that manner. According to the exceptions taken on the trial no Federal question was raised which was decided against the plaintiff in error. As we have seen, the motion to dismiss the complaint does not claim any right under any provision of the Federal law nor in any way raise any Federal question. So far as the record discloses, the matter of the inspection of the launch was not mentioned on the trial. Nor was the lack of license to her

pilot made the subject of any exception. The case was not tried with reference to review in this Court, but rather in line with the New York Court of Appeals decisions which hold that under the circumstances of this case the question whether the violation of the statute contributed to the injury would be for the jury to decide. No request or point was anywhere made which required the Court to decide as matter of law that the violation did contribute to the accident. The only time such violation was mentioned was when the counsel for the plaintiff in error asked the Court to submit to the jury the question whether the disregard of the statute had contributed to the accident. It is difficult to see how the plaintiff in error can now claim that it was wrong to give the instruction which its own counsel asked. The Federal question not having been presented to the State Court the case should be dismissed.

Winona Land Co. vs. Minnesota No. 2, 159 U. S., 540, and cases cited in the opinion.

III.

If it were possible to raise the question here that the action should have been dismissed or defeated for a breach of the Federal Statutes by the launch, the point would be frivolous.

The authorities collected under the First Point clearly show that the failure to observe statute regulations would not bar the action if it were established that the disregard of the law did not in any way contribute to the accident. And it was so established to the satisfaction of the jury and the State Courts in which alone the question could be litigated. Taking the facts found and stating the case in the best way for plaintiff in error, it is that there was a breach of the United States statutes, which breach did not in any degree contribute to the accident. As the Appellate Division say in their opinion, breaking the statutes does not necessarily and in all cases bar the plaintiff's recovery, for the breach of the law may have no connection with the injury. The question of law would thus be whether a disregard of the statutes of the United States by a plaintiff in a collision case would bar his action, provided it was proven that such disregard did not in any degree help to cause the injury. And this is a question which is so frivolous as to need no further argument.

IV.

There was evidence to show that the disregard of the United States Statutes by those in the launch (if any) did not contribute to the accident and hence the question was properly submitted to the jury.

If I am correct in the previous contention that this question is non-federal and this Court will not examine it this point is unnecessary. But out of abundant caution I thought it best to index here some of the evidence on the subject.

If there was perfectly clear daylight upon the transaction at the time of the collision the absence of a light from the launch could have no effect to cause or produce the accident. Under such circumstances the position and course of the launch were as obvious to one upon the ferryboat as if she had all the lights required by law. One who looked in the direction in which the launch was would see her and her course without lights, and one who did not so look would not see her if she had lights.

On July 21st the sun set at 7:26 P. M., and between that time and 7:30 P. M. there was, of course, perfectly clear daylight. Mr. Olsen, a perfectly disinterested and intelligent witness, said: "I looked to see what time it was; the time was half-past seven." "I looked at my watch at the foot of South Fifth street after the boats came together." "I looked at my watch when I left the pier, then it was half-past seven;" Record, p. 46 [60]. "My watch was correct that night" (p. 47 [60]).

Speaking of the light the same witness says: "I read the name of the ferryboat from the New York side coming up; it was on the side of the ferryboat; * * * I remember I read the name of the New York" (p. 46 [61]). "The sort of light I saw this with was daylight" (p. 45 [58]).

Gonzales said the accident happened "about half-past seven" (p. 17 [11]), and such also is the result of the evidence of Edwin Schutz, given at page 37 [45.] On the trial the ferryboat pilot testified that the accident happened on his last trip that evening, On the coroner's inquest he first testified that it happened on his next to last trip that evening (pp. 88 [129], 86 [127]), and if this first testimony before the coroner was true, the accident must have happened before 7:30 P. M. (p. 87 [128]).

The evidence as to the condition of the light is most convincing. Edwin G. Schutz says: "The state of the light was very light—daylight" (p. 37 [45]).

Charles H. Valentine says: "It was very light—daylight; a person could see clearly; 200 feet away I could see them on the boat. * * * I saw both sides of the river clearly by the aid of daylight" (p. 42 [53]). He read the name on a passing tug 200 feet away (44 [57]).

Mads Olsen says: "I could read the name on the ferryboat across the river very plainly; I read from where I stood to the point of collision, 400 feet away." Page 45 [57].

Charles A. Rogers said: "It was daylight; I had no difficulty whatever in seeing two blocks away. At that time—the time the accident occurred—I could see across the river with daylight." Page 48 [63].

Mrs. Zorah Rogers said: "It was daylight, *perfectly clear daylight;* you could plainly see everything." Page 50 [66].

Benjamin Harling said: "It was daylight; I saw across the river. At the time the accident happened I saw the other side plainly." Page 53 [71].

And August Keller and Frank Sckecker, who were over 1,000 feet distant, saw the accident plainly, and both say it was clear daylight at the time. Pages 56 [76], 56 [77]. And so does William Bates, who was 400 feet distant. 54 [73].

The above named are all perfectly disinterested people, not knowing either party to the controversy, and their evidence given on the trial in corroboration of Williamson and McCann was simply overwhelming on the question of light.

Baulsir, the ferryboat pilot, admitted that, if there was daylight on the transaction, he was in the wrong, but sought to justify himself on the plea of darkness. The marked conflict between the evidence which he gave on the first and second evenings of the Coroner's inquest and that which he gave on the third evening and afterwards on the trial, together with the contradiction of his evidence by a large number of people, was sufficient to destroy his credibility. It is true Baulsir swore that he did not see the launch before turning his bow to port, but in this the jury were not bound to believe him. One occupying his situation on this trial is not necessarily to be believed. His credibility, even if uncontradicted, is a question for the jury.

Wohlfahrt vs. Becket, 92 N. Y., 490.

The surrounding circumstances, the blowing of the launch's whistle before the ferryboat turned to port, and the condition of the daylight when the accident happened, clearly show that the ferryboat pilot must have seen the launch before making the fatal turn to port which brought the ferryboat into collision with the

smaller boat. At any rate, the jury would have been justified in deciding that he did see it, and thus that the absence of artificial light was not material.

The question is not whether the evidence would convince a Court of admiralty as to what the fact was, but whether it constitutes any evidence to show that the absence of light on the launch did not contribute to the accident. For any evidence will entitle the case to be submitted to the jury.

So far as the absence of inspection by the Federal authorities is concerned, it is plain it could have no connection with the collision, and the same is true of the matter of a license to the pilot or engineer. As long as the launch was managed with reasonable prudence and care, and committed no fault which contributed to the accident, as the jury have found, the matters of license and inspection were immaterial.

The writ of error should be dismissed or the judgment affirmed.

CHAS. J. PATTERSON,
Of Counsel for Defendant in Error.

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Office Supreme Court, U. S.
FILED.
MAR 8 1897
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States,

OCTOBER TERM, 1896.

No. 681.

THE BROOKLYN AND NEW YORK FERRY COMPANY,
Plaintiff in Error,

vs.

KATIE J. MacMAHON, Administratrix of the Goods, Chattels and Credits of JOHN JOSEPH MacMAHON, deceased,
Defendant in Error.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

BRIEF FOR THE PLAINTIFF IN ERROR IN OPPOSITION TO THE MOTION OF THE DEFENDANT IN ERROR TO DISMISS THE WRIT FOR WANT OF JURISDICTION, OR TO AFFIRM FOR WANT OF MERIT.

JAMES TROY,
GEO. BETHUNE ADAMS,
Of Counsel for the Plaintiff in Error.

B. H. TYRREL, Printer, 74 Maiden Lane, N. Y.

Supreme Court of the United States.

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KATIE J. MACMAHON, Administratrix of the Goods, Chattels and Credits of JOHN JOSEPH MACMAHON, deceased,
Defendant in Error.

In Error to the Supreme Court of the State of New York.

Brief for the plaintiff in error in opposition to the motion of the defendant in error to dismiss the writ for want of jurisdiction, or to affirm the judgment for want of merit.

The main references herein are to the pages as printed. When reference is made to the original pages, they are enclosed in brackets, thus [ ].

Statement.

On Sunday, the 21st day of July, 1895, the deceased John Joseph MacMahon, with two companions, namely, John Williamson and Charles L. McCann, embarked in a small boat, described as a "steam launch," at the Wallabout Basin, and pro-

ceeded up the East river towards Blackwell's Island, intending to go that far (p. 33 [37]). McCann was an undertaker's assistant (p. 21 [19]), and had known MacMahon for a week previous (p. 21 [19]), and Williamson for about a month (p. 26 [25]).

Williamson acted as engineer; McCann sat in the bow and took no part in the management of the boat; MacMahon had the tiller (p. 27 [27]), was steering and in charge (p. 66 [92]).

McCann, the undertaker's assistant, had no knowledge whatever as to the navigation or management of a boat (p. 27 [27]).

Williamson was engaged in the bell-hanging business; claimed to have been a mechanical engineer, and did "not "know anything about steering or sailing a boat—nothing at "all; I never had anything to do with it" (62 [87]).

MacMahon was, and always had been, a travelling salesman in the dry-goods trade, and worked steadily at his business every day, "never missed a day" (63 [88]; 74 [106-7]). He had no knowledge or experience in the management or navigation of a boat.

There were no other persons on board the boat —no licensed engineer, or pilot.

The boat was an old one (57 [78]), obtained by Williamson to experiment with, and on getting possession of her, he took out the old machinery, put in a second-hand engine, which he afterwards altered almost entirely for experimental purposes (61-2 [85-6]). She was 20 feet 4 inches in length and 5 feet 3 inches beam, 19 inches in depth from the bottom to the gunwale, was round-bottomed and sharp at both ends (97 [144]), and had no keel or centerboard (26 [26]). She was a paddle boat, her wheels projecting beyond the sides and extending 8 inches above the gunwale, and the tops were boxed or covered over (97 [144]). These wheels were about 22 inches in diameter, each containing 3 floats or paddles, each float being 10 or 11 inches in length and 3½ or 4 inches wide (62 [86]). They were not stationary or bolted to the rims of the wheel, but were constructed so as to hang and strike the water edgewise as the wheel revolved, turning again as they came out of the water (62 [86]). Williamson claimed that it was a new principle, invented by himself, and he had been experimenting with it for six or seven years (62 [86]). She was steered with a tiller (26 [26]).

Williamson had not taken out the boat before in the locality where the accident happened (57 [78]). He says in his testimony: "I was experimenting with her on the *night* in ques-"tion and went out for that purpose; the experiment I was "trying *that night* when I took this boat out, was to find "out whether she would go against the current, that I had "previously noticed; did not know whether she would or not, "when I started out, and I went out to try it—that is what I "did "(62 [86]).

From the Wallabout Basin, where the party embarked, the boat proceeded up the river towards Blackwell's Island, on the Brooklyn side, passing the Broadway Ferry slip, the Roosevelt street Ferry slip and the Twenty-third Street Ferry slip at the foot of Broadway, Brooklyn, and others adjoining, six in all, which occupied the river front at that place for more than a block (22 [20], 25 [24], Exs. pp. 124, 126); and the repair yard north of and adjoining the Twenty-third slip occupied another block. The ferries were in operation, and every three minutes a boat would enter, and another leave, some one of those slips (25 [25]). The Broadway ferryboats cross the river almost directly to Grand street, New York; the Roosevelt Street ferryboats go down stream from this point to the foot of Roosevelt street, New York, and, of course, come up stream in returning. The Twenty-third street boats alone go up stream, after leaving the slip on the Brooklyn side, to the foot of Twenty-third street, New York. The course is not only across but *up* river, almost in midstream, for nearly two miles, and coming down stream from Twenty-third street they return over the same course, except as they may attempt to avoid or avail themselves of the tide. No other ferryboats on the river take this course to Brooklyn (32 [36]).

McCann had lived all his life in Brooklyn, had constantly travelled on those ferries, was thoroughly familiar with them and the place, knew the frequency with which boats went in and out, and their general course at this point (25 [24-25]).

Williamson had equal knowledge on the subject (61 [84-85]).

MacMahon lived in Brooklyn, near the ferries, and had lived in New York (26 [27]); 74 [106]; presumably he was familiar with the location and working of the ferries.

Instead of going as far as Blackwell's Island, as originally intended, the launch was taken into a slip at the foot of South

Second street, about five blocks above the ferry slips, and remained there for more than an hour (58 [79]), and then started to return. This was about 7-45 P. M. (21 [19], 27 [28], 28 [30], 58 [79]).

There was a strong flood tide with the launch as she went up the river (27 [28]). It was still stronger, and against her, as she returned, and stronger on the Brooklyn side than elsewhere (27 [28]). McCann described it as "a terrible tide" (29 [30]).

The feeble power of the launch is indicated by the expression of the witness McCann, who says: "We *crawled* up the river towards Blackwell's Island, *and down* towards Governor's Island" (22 [20]).

The flood tide attained high water at Hell Gate at 9:05 o'clock. (See Plaintiff's Exhibit No. 2, p. 126.)

On leaving the slip at the foot of South Second street, the launch headed down stream towards the Wallabout on the Brooklyn side against this tide, and was only sufficiently far out to clear the piers, but not the Twenty-third street ferry racks (she was ten or twelve feet out from Glen Island dock at South Fifth street) (54 [72], 108 [164]).

The Twenty-third Street Ferryboat *New York* left her slip at the foot of Twenty-third street, New York, at 7:50 P. M., on one of her regular trips to Brooklyn (81 [118]). The ferryboat was in charge of a licensed pilot, with an experience of over forty years as such on the East river, having been in the service of the Union Ferry Company for thirty-six years, and in the employment of the plaintiff in error on the Twenty-third street ferry for about five years; he was thoroughly acquainted with the tides, the management of the ferryboats, and the effect of the different tides upon them in the river and in entering the slips. He was a careful, skillful helmsman, who never had an accident in all his long experience (80 [116-117]).

The ferryboat was an iron boat, 185 feet in length, and sixty-five feet beam over all, with a deck and cabins extending out over the hull on each side about eight feet. Either end of the boat is used as a bow with equal facility, and on each end there is a rudder, and the rudder on the end which is forward on any trip, is made immovable for the occasion by means of an iron pin let in from the deck. There is a pilot house on each end above the cabins, about sixteen feet from the deck, and the pilot steers

from that which is the nearer to the end then being used as the bow (81 [117]).

Early in the afternoon of the day in question the weather became cloudy, and the cloudiness increased until a thunder storm occurred about 9 P. M. At and before 8 o'clock P. M., the weather was cloudy and threatening (75–6[108–109]). At the time of the accident the witnesses variously describe the condition as "dark," "getting dark," "cloudy," and "light"—and upon this subject there is considerable contradiction. At all events it was after sundown, which was at 7:26, and the launch exhibited no light. The only lamp that had been on her, was lost overboard at South 2nd street (60 [83]). The ferryboats and other craft travelling on the river had their lights set (81 [118] 65 [92]). The narrowest part of the river is opposite the foot of Broadway, Brooklyn, where those slips are situated, and the tide was stronger and more rapid there than elsewhere on the river. Under the most favorable circumstances it requires great skill and a thorough knowledge of the tides and river, and the utmost care and judgment, to enter or leave the slips with safety to boat and passengers. On the evening in question there were a great many vessels of all kinds under way in the river, including excursion barges, tows, steamers, towboats and ferryboats, all of them necessarily obstructing each other more or less in the navigation of the river, and rendering the utmost vigilance and care necessary to avoid accidents.

The launch, on leaving the slip at South Second street, was about 800 feet above the Twenty-third street ferryslip, and she took from twenty to twenty-five minutes to go that distance, because of the "terrible tide" (28[30]). When she reached a point about 200 feet away from the Twenty-third street slip, the ferryboat was out in the river, coming down, and those on the launch saw her turning at this point and coming towards the slip, and were apprehensive of danger (29 [32]). MacMahon's attention was then particularly called to the ferryboat and the obvious danger (30 [32, 33], 33 [38, 40], 63, [87]).

When nearer the ferryboat, one of the men in the launch blew the whistle a number of times to attract the attention of the ferryboat, and they discussed the situation between them and whether they could reach the slip and "*get by*" it before the ferryboat came in, and they concluded to go right on (66[92]).

Williamson testified as follows as to what took place on the launch at this time, when the danger of going ahead was recognized: "MacMahon done the steering, he was in charge. "* * * I asked him if he thought he would be able to get "by, he said he was afraid not; 'well,' he said, 'do what you "think best, I shall not stop.'" They proceeded at almost right angles to the course of the ferryboat, and had got nearly across the mouth of the slip, when the tide caught the launch; she struggled with it, but was unable to make any further headway. Then Williamson stopped the engine and told McCann to put out the oars and pull, as he was apprehensive that the reversing gear might not work (65 [91]). At this time the ferryboat was about forty feet away from them. The oars were put out, the reversing gear would not work; McCann pulled two strokes with the oars, and threw them down in fright, and all this time the helpless launch, in the strong tide, was drifting back, stern foremost, right under the bow of the ferryboat, then nearly up to them; and as the boats came together, McCann and Williamson climbed on board the ferryboat, assisted by some of the passengers. The iron rudder of the ferryboat, which was then being used as a stem, came in contact with the starboard bow of the launch, about four or five feet abaft the stem of the launch, which drifted stern first under the ferryboat's guards on the port side. MacMahon was then sitting in the stern under the awning (32 [35]), but when the launch was washed out from under the guards by the back water from the wheels of the ferryboat, which had been reversed (84 [123]), he had disappeared, and he was notseen again. His body was found four days after.

The force of the blow was very slight. The launch was not upset, and did not take in any water.

The ferryboat had come down stream against the tide and turned under the stern of a steamer going up the river with an excursion barge in tow, and when about 200 feet out from the end of the ferry rack the pilot rang one bell for half speed, which was obeyed by the engineer, and he shaped the ferryboat's course directly for the slip. The launch, however, being without lights, was invisible to the pilot of the ferryboat until the ferryboat was within from fifty to

one hundred feet of her (84 [122]), and then the ferryboat's pilot immediately rang three bells, which meant to stop and back quickly (116 [176]), and these bells were obeyed by the engineer. As the launch was drifting up stream with the tide, the pilot of the ferryboat ported his wheel to go below her, if possible. He was compelled to act on the instant, and adopted the best course his judgment and experience dictated.

It may be surmised that MacMahon, seeing the other two climb aboard the ferryboat, and the launch at the same time drifting under the guards, pitching or rolling, or "bobbing," as they called it, in the back-water,attempted to get up, and as he arose suddenly, he may have struck his head against this deck or the iron sheathing, making a wound which was found upon his head. This blow may have rendered him unconscious, and at the same time knocked him overboard, and being unconscious, he immediately sank.

When the plaintiff rested defendant moved for a nonsuit on the grounds stated in the record, which motion was denied and an exception taken.

At the close of the testimony the motion was renewed on the same grounds, which motion was also denied and an exception taken.

The jury rendered a verdict for the plaintiff for $21,000.

(Apart from the special references heretofore given, attention is particularly called to the testimony of the following witnesses, viz.: *McCann*, pp. 21–37; *Williamson*, pp. 57–64; *Baulsir*, pp. 80–93.)

Point One.

UPON THE UNDISPUTED FACTS IN THE CASE, THOSE ON THE LAUNCH WERE GUILTY OF VIOLATING THE LAWS OF THE UNITED STATES IN SEVERAL IMPORTANT PARTICULARS.

A.

The launch was being navigated after sunset without the lights required by law.

It is provided that all steam-going vessels shall, between sunset and sunrise, carry and exhibit side lights; on the starboard side a green light and on the port side a red light, each showing a uniform and unbroken light over an arc of the horizon of ten points of the compass, and so fixed as to throw the lights from right ahead to two points abaft the beam on the respective sides.

U. S. Rev. Stats, Sec. 4233.
23 U. S. Stats. at Large, 438.

Open boats, if they do not carry the above-prescribed side lights, shall carry a lantern having a green slide on one side and a red slide on the other side, and exhibit the same, in the proper manner, to approaching vessels in time to prevent collision.

Rule 13, Sec. 4233.
Art. 7, 23 Stats. at Large, 438.

There is no contention that the launch had or exhibited any light whatever. Lights were required for the purpose of showing other vessels where the boat was and what she was doing. The pilot of the ferryboat swore that he did not, and could not, see the boat on account of the darkness. Some witnesses support him in his account of the darkness, and others controvert what he says, but it is evident that the defendant in error has not sustained the burden placed upon her by the decisions of this Court which hold that when a vessel has committed a positive breach of statute, she must show, not only that probably her fault *did* not contribute to the disaster, but that it *could* not have done so.

Belden vs. *Chase*, 150 U. S., 674, 699.
The Martello, 153 *Id.*, 64, 74.
The Britannia, *Id.*, 130, 143.

B.

The launch was not under the control of a licensed pilot or engineer.

It is provided that steam vessels shall, when under way, except on the high seas, be under the control and direction of pilots licensed by the United States Inspectors of Steamboats.

U. S. Rev. Stats., Sec. 4401.

It is also provided that the engineers of such steam vessels shall be licensed.

Id., Sec. 4441.

It is further provided that no vessel of the character of this launch "shall be navigated without a licensed engineer and a licensed pilot."

Id., Sec. 4426.

There was no pretense on the part of the defendant in error that either of these requirements was complied with, and it is clear that the ignorance and incapacity of those navigating the launch were the direct cause of the disaster.

C.

The launch had not been inspected according to law.

It is provided that the hull, boilers, &c., of steam vessels shall be inspected at least once in every year.

Id., Secs. 4417, 4418.

There had been no inspection of this craft for several years, and she was being navigated in this particular, also, in defiance, or ignorance, of the United States Laws. Her condition was defective, as was manifested by her inability to reverse her engines, and this directly contributed to the disaster.

D.

The navigation of the launch was in plain violation of the law.

1. The ferryboat was bound down and across the river from

New York to Brooklyn. Her swing, when in the vicinity of her Brooklyn slip, was a necessary part of her course.

> "The course of a ferryboat is that which she is obliged "from necessity to hold in order to effect an entrance to "her slip, with all the changes and turns which that course "necessarily involves."
>
> *The John S. Darcy*, 29 Fed. Rep., 642, 647.

Those on the launch were chargeable with knowledge of the usual course of the ferryboat under the circumstances.

Id., 646.

Moreover, they had actual knowledge that the ferryboat was bound for her usual slip, or, at least, for one of the slips in the immediate vicinity, and this gave her a course across the course of the launch, which was then headed down the river to pass close to the mouths of the slips.

The launch then had the ferryboat on her own starboard hand, and it was the launch's duty to avoid the ferryboat, and the latter's duty to keep her course.

Rules 19 and 23 U. S. Rev. Stats., Sec. 4233.
The Britannia, 153 U. S., 130.
The Delaware, 161 *Id.*, 459.

Instead of fulfilling her duty, the launch persisted in maintaining her course under the mistaken theory that she was required to do so (66 [93]).

2. The ferryboat, as such, was a privileged vessel, and entitled to an unimpeded entrance to her slip. It was the launch's duty to keep out of her way. The collision occurred in the ferryboat's slip.

This Court has said :

> "In view of the large number of ferryboats plying be-"tween New York and the opposite shores, sometimes as "often as once in three or four minutes from the same slip, "their departure at any moment is a contingency which "ought to be reckoned upon and guarded against. There "is a necessity that these transits be made with great "frequency and regularity, not only in order that the pub-"lic may be accommodated, but that ferryboats arriving

"from the opposite shores, shall not be compelled "to lie in the stream, with a chance of encountering other "vessels, to await the departure of their consorts from the "New York slip. Steamers plying up and down the river, "should, therefore, keep a sufficient distance from the "dock, and hold themselves under such control, as to enable "them to avoid ferryboats leaving their slips upon their "usual schedules of time. The respective obligations of "ferryboats and other steamers were fixed in accordance "with this rule by Judge Betts as early as 1845, in the case "of *The Relief*, Olcott Adm., 104, in which he spoke of "the rights of ferryboats 'to an undisturbed passage be-"tween their landing places, in the performance of their "duties in that capacity, as a species of privilege or immu-"nity not accorded to other vessels,' and declared it to be "the duty of other steam vessels to keep as near as possible "to the center of the stream in passing up and down, in "order that the exit from and entrance into the ferry slips "should not be checked or embarrassed by the presence of "other vessels passing close to them. This practice has "been acquiesced in for at least half a century, and has "been repeatedly recognized by the local Courts. *The* "*Favorita*, 8 Blatchford, 539; *The Monticello*, 15 Fed. "Rep., 474; *The John S. Darcy*, 29 Fed. Rep., 644; *The* "*West Brooklyn*, 45 Fed. Rep., 60; S. C. 49 Fed. Rep., "688; *The Brooklyn*, 62 Fed. Rep., 759. *The Favorita* "was also affirmed by this Court under a similar recogni-"tion of this rule. 18 Wall., 598."

The Breakwater, 155 U. S., 252, 261.

3. Though the danger of collision was, or should have been, obvious to those on the launch, they persisted in keeping on, thus violating *Rule 18, Sec. 4233 U. S. Rev. Stats.* It is always the duty of a steam vessel to stop and reverse when there is danger of collision, and such duty rests with particular force upon the vessel which the law requires to keep out of the way of the other.

The Delaware, supra.

4. The ferryboat, in swinging for her slip, was going with the tide. The launch was going slowly against the tide, which was very strong, and she could have been stopped instantly. The launch was in fault for not avoiding the collision in this way.

The Galatea, 92 U. S., 439.

Point Two.

IT IS NOT NECESSARY TO CONSIDER THE QUESTION OF FAULT UPON THE PART OF THE FERRYBOAT.

It is extremely doubtful if there could, in view of the ignorance and recklessness with which the launch was navigated, and the evidence of the ferryboat's movements, be a question of fact as to any fault on the part of the ferryboat.

The City of New York, 147 U. S., 72, 85.

But even if the ferryboat was also in fault, the plaintiff was not entitled to recover. She was obliged to establish the negligence of the defendant and that such negligence was the sole cause of the death. She could not recover, though the ferryboat was in fault, when it appeared that the deceased's own negligence, or the negligence of those with whom he was associated, contributed to the collision.

Belden vs. *Chase*, 150 U. S., 691.
N. Y. H. Towboat Co. vs. *N. Y. L. E. & W. R. R. Co.*, 148 N. Y., 574.

It will be noted that the deceased was steering the launch, and the case was tried upon the theory that if there was negligence on the part of the launch, those on board of her were all responsible for it (122).

Point Three.

THIS COURT HAS JURISDICTION TO REVIEW THE JUDGMENT.

It has been shown that the deceased, in conjunction with the others on the launch, violated several express rules of the United States for the preservation of life and property upon navigable waters.

It has been said by this Court :

" We are of opinion that the writ of error was providently

"allowed, and that the jurisdiction of this Court is clearly "maintainable.

"Plaintiff in error expressly claimed the right under "the statutes of the United States to navigate the *Yosemite* "on the Hudson with a masthead light and side lights in "accordance with the statutory rules on that subject, and "also the right in such navigation to the application of "those rules in certain other particulars; and if these "rights were denied, or either of them, the jurisdiction "attached for the determination of the question thus "raised. It is of vital importance that these rules should "be interpreted and enforced by the State Courts in the "same sense that they are in the Courts of the United "States. This action was for a maritime tort committed "upon navigable waters and within the admiralty jurisdic- "tion, and the Appellate jurisdiction of this Court over "questions national and international in their nature "cannot be restrained by the mere fact that the party "plaintiff has elected to pursue his common law remedy "in a State Court."

Belden vs. *Chase*, *supra*, p. 690.

It is sufficient for the jurisdiction to attach if it appears from the record, by clear and necessary intendment, that the Federal questions were so directly involved that the Court could not have given judgment without deciding them, and that the decision was against the rights claimed.

Powell vs. *Brunswick Co.*, 150 U. S., 433, 440.
Sayward vs. *Denny*, 158 U. S., 180, 184.

It is clear from the cross-examination of the plaintiff's witnesses who were on the launch, that the defendant intended to rely solely upon the violation of the United States rules.

They were examined on the following subjects:

Their knowledge of the movements of the defendant's ferryboats generally, for the purpose of showing the necessary position and course of the ferryboat in question (25, 28, 32, 33, 61).

Their occupations and knowledge of boats, to show that they had not the qualifications to navigate a boat safely (27, 60).

The tide, to show that it would have enabled them to avoid the ferryboat (29, 35.)

The movements of this ferryboat, to show the application of the rules (29, 30, 36, 37, 64.)

The danger of proceeding, in view of the direction the ferryboat was seen to take (30, 34, 36, 37, 65).

The position of the launch at various times, to show its unlawful proximity to the ferry slip, and the application of the 19th and 23d rules of navigation (30, 34, 35).

The defects in the machinery, to show the result of want of inspection, and that if the reversing gear of the launch had worked properly there would have been no collision (31, 61, 62, 63, 65, 66).

The point of contact on the launch, to show that by stopping or reversing the collision might easily have been avoided by those on the launch (32).

Their presence in the ferryboat's slip at the time of collision, to show the launch's unlawful position (34, 64).

The absence of lights on the launch (65).

Their ignorance of the rules of navigation (66).

At the close of the plaintiff's case, the defendant made a motion to dismiss the complaint upon the ground that the deceased, and those with whom he was associated, were negligent in the use, management and *navigation* of the launch and her machinery. While the specific allegations of negligence were not stated in that motion, it was not necessary to specify them to raise a Federal question, because there could be no negligence in *navigating* a vessel excepting under Federal laws, which are necessarily the only rules applicable to the navigable waters of the United States.

The word "navigating," if nothing else, raised all the Federal questions which are presented in this case.

The Rules of Navigation are defined by Bouvier as follows:

> "Rules and Regulations which govern the motions of "ships or vessels when approaching under such circum- "stances that a collision may possibly ensue.
>
> "These rules are firmly maintained in the Untied States "Courts." * * *
>
> "8 The rules of navigation, under the general maritime "law, particular statutes, and also the rules of the mari- "time law, and of prior enactments, in regard to vessels "carrying lights, have, in most commercial countries, been "entirely superseded by general rules of navigation and

"general regulations in respect to vessels' lights, which "were agreed upon by the governments of Great Britain, "and France in 1863 (1 Lush. Adm. Appendix, lxxii) and "which have since been adopted by most of the commer- "cial countries of Europe and by Brazil and most of the "South American Republics, as well as by the United "States and Canada (*Id.* lxxvii and lxxviii, 13 U. S. Stat. "at Large, 58; Acts of Canadian Parl., 1864). These "rules and regulations will be found in the Act of Con- "gress above referred to, and which took effect September "1, 1864."

* * * * * * * *

The rules taking effect September 1, 1864, are then specified, and the author adds:

"15. It is evident that these rules and regulations were "intended to supersede all other rules of navigation and "every other system or vessels' lights wherever they may "may be adopted. They establish a well-devised and "complete system of vessels' lights and furnish plain and "simple rules of navigation applicable to all the ordinary "cases of vessels approaching each other under auch cir- "cumstances as to involve the risk of collision."

Bouvier's Law Dict'y, Vol. 2, pp. 206–208.

It has been said by this Court:

"Usages, called sea laws, having the effect of obligatory "regulations to prevent collisions between ships engaged "in navigation, existed long before there was any legisla- "tion upon the subject, either in this country or in the "country from which our judicial system was largely bor- "rowed.

"Plenary jurisdiction was conferred upon the Courts in "such controversies, and the judicial reports show, be- "yond peradventure, that the Courts, both common-law "and admiralty, were constantly in the habit of referring "to the established usages of the sea as furnishing the rule "of decision to determine whether any fault of navigation "was committed in the particular case, and, if so, which "of the parties, if, either, was responsible for the conse- "quences."

"Examples of the kind are quite too numerous for "citation, and they are amply sufficient to prove that the "usages of the sea, antecedent to the enactment of sailing "rules, constituted the principal source from which the "rules of decision, in such controversies, were drawn by

> " the Courts of admiralty and all the best writers upon
> " the subject of admiralty law (Maclachlan on Ship., 2d
> " Ed., 280; Williams & Bruce's Prac., pp. 4, 15).
>
> " Sailing rules and other regulations have since been
> " enacted, and it is everywhere admitted that such rules
> " and regulations, in cases where they apply, furnish the
> " paramount rule of decision."
>
> *The City of Washington*, 92 U. S., 31.

And beyond the effect of statutory enactment, the rules for safe navigation arising out of local usages, and enforced by the United States Courts, have the binding effect of law. For example, the rights of ferryboats (*The Breakwater*, *supra*), established by the U. S. Admiralty Courts, should be applied by the State Courts. It would be most anomalous if this were not so.

The judicial power of the United States, under the Constitution, extends to all cases of admiralty and maritime jurisdiction upon the navigable waters of the United States.

The Genesee Chief, 12 How., 443.

It would be intolerable if different rules of navigation prevailed in different Courts, so that a litigant in a State Court could obtain a judgment against the owners of a vessel which the rules prevailing in the United States Courts of Admiralty would not countenance.

Therefore, the motion to dismiss the complaint necessarily brought before the Court for its consideration, the enactments of Congress and the rules of navigation enforced by the Admiralty Courts of the United States. They are the paramount rules, and they were necessarily referred to by the plaintiff in error when it asked the Court to apply the law to the undisputed facts, which established the negligence of the deceased with respect to such enactments and rules.

Speaking of the rules for preventing collision pescribed by Sec. 4233, and the regulations established by the Board of Supervising Inspectors under Sec. 4412, this Court has said:

> " The rules laid down by the latter as thus authorized
> " have the force of statutory enactment, and their con-
> " struction, when put in evidence, as they were in this
> " case, as well as the rules under Section 4233, is for the

"Court, whose duty it is to apply them as a matter of law
"upon the facts of a given case. They are not mere pru-
"dential regulations, but binding enactments, obligatory
"from the time that the necessity for precaution begins,
"and continuing so long as the means and opportunity to
"avoid the danger remains (*The Dexter*, 23 Wall., 69).
"Obviously they must be rigorously enforced in order to
"attain the object for which they were framed, which
"could not be secured if the masters of vessels were per-
"mitted to indulge their discretion in respect of obeying or
"departing from them."

Belden vs. *Chase*, *supra*, 698.

If there was any doubt that Federal questions were presented when the motion to dismiss was made at the close of plaintiff's case, it was completely removed by what took place after the denial of such motion.

John V. Baulsir was called as a witness for the defendant. He was the pilot of the ferryboat.

His testimony, briefly stated, showed that he was an experienced pilot of ferryboats; that the difficulty in making the slip to which his boat was bound was on account of the strong tide (80); that he followed the usual and necessary course in making the slip (82, 83), and was in the midst of the necessary manœuvres when he saw the launch, about fifty or one hundred feet away; that just previous to that he had heard whistles but could not locate them (83); that he had already stopped the engines of his boat to enter the slip, and immediately upon seeing the launch, which he described as "a little object floating past" (83), he reversed the engines and put his wheel hard-a-port, but it was too late to avoid the contact altogether, though he succeeded in stopping the headway of the boat so that the touch was very light (84).

He was cross examined by the counsel for plaintiff on "*the "rules laid down by the United States authorities for the "government of New York Harbor*" (89 [131]).

In such cross-examination, and the re-direct examination which followed, he stated the United States rules governing the navigation of these vessels with substantial correctness. He said: "A vessel which has the other vessel on her port "bow is obliged to keep on her course and keep up her course." "*By the Court:* No, sir; the other vessel is obliged to keep

"to the port side" (89-131); "the vessel on the starboard has "the right of way" (89-132). "I did not have to give way "if I knew she was there; I was showing her my port light" "* * *"; "if I knew he was on my port bow, it was not my "business to give way to him; his business to go under my "stern and my business to keep on my own course" 92-137). In other places, his statements concerning the rules are confused, but the details of the testimony, in the aspect in which the case is now presented to this Court, are obviously immaterial. The whole examination with respect to the rules shows beyond question that the case was being tried by the defendant with a view to the rules, and that attention had been directed to them when the motion to dismiss was made. If, as the counsel for the defendant in error now contends, the motion of the defendant for a dismissal of the complaint "simply raised "the question whether, under the general principles of juris- "prudence, the defendant was entitled to a nonsuit" (Brief, p. 9), why did he cross-examine the defendant's pilot upon "*the rules laid down by the United States authorities for the* "*government of New York Harbor*"? The reason is clear. The rules had been referred to when the motion was made. They do not appear specifically in the motion, because it was not necessary that they should. The Court was bound to take judicial notice of the rules of law governing the situation, and when it clearly appeared that the plaintiff's intestate had violated those rules, then the law became operative, and the Court was bound to apply it.

Belden vs. *Chase*, *supra*, 698.

Nothing appeared in the defendant's evidence to change the aspect of the case, as presented by the plaintiff's evidence with respect to the violation of the rules by the plaintiff's intestate.

At the close of the evidence, the motion to dismiss was renewed on the whole case, on the same grounds as previously presented, and it was again denied, and a further exception taken.

In the charge of the Court, it again clearly appeared that the special rights of ferryboats, and the rules of navigation, had been under consideration.

The Judge said (118, 119):

"While special privileges are conferred by law upon "ferryboats and special watchfulness upon vessels crossing "each other's tracks is enjoined by the Courts, and is "essential to safety, there is no rule that excepts them "from the consequence of culpable negligence, or from the "exercise of care and skill proportioned to the dangers of "the navigation and the circumstances in which they may "chance to be in respect to other vessels. This is not "inconsistent with the protection given them by the law "in the exercise and enjoyment of the privileges accorded "them in the usage of their ordinary track as a passage-"way.

"The burden of proof is upon the plaintiff to show that "the injury was caused by the wrongful and negligent "act of the ferry company, and without fault on the part "of those in charge of the launch.

"In actions for injuries arising from the collision of "vessels navigating public waters, the question is one of "negligence on the part of those in charge of the respective "vessels, and the omission of either or both to conform to "the legislative enactments is but one of the circumstances "to be considered in ascertaining the approximate cause "of the injury; and if it appears that the injury was "caused solely by the negligence or want of proper care "and caution in managing either of the vessels, and that "disregard of the statutory regulations did not contribute "to it, directly or indirectly, the mere omission to comply "with the statute will not bar the action by the person "hurt, but operates against the one by whose neglect the "injury was caused."

The following quotations from the charge will further show, that these rights and rules were all the time under consideration:

At p. 120 (183) "navigable river or water."
At p. 122 (186) "management or navigation of their boat."
At p. 122 (187) "management and navigation of the boat."
At p. 123 (188) "The defendant and its agents and servants "* * * had a right to assume that * * * "all persons operating or navigating vessels "propelled by steam in the waters of the "East River had complied with, and were "proceeding under and in obedience and "according to *all laws of the United States*

"applicable to such persons, vessels and "navigations, *and all rules and regulations* "*made and existing thereunder*, and that "all such vessels were properly supplied "with competent persons, such as the law "required, as engineers and pilots, and with "proper engine, boilers and machinery, with "lights and whistles."

* * * * * * *

"That the deceased and his associates in "the boat were negligent in not exhibiting "a light on the boat as required by the "*laws of the United States*, and if such "negligence contributed to the accident the "plaintiff cannot recover."

It is obvious that the mere fact that the Judge charged the law correctly (assuming *arguendo* it was correctly stated) does not change the aspect of the case. The submission to the jury of the case at all, over the defendant's objections, was the legal error which it is sought to rectify here.

Point Four.

THERE IS NO COLOR OF RIGHT FOR THE MOTION TO DISMISS, AND THE COURT SHOULD NOT CONSIDER THE MOTION TO AFFIRM.

Where there is no color of right to a dismissal of the Writ of Error, the case being clearly within the jurisdiction of this Court, a motion to affirm will not be entertained.

Whitney vs. *Cook*, 99 U. S., 607.
Davies vs. *Corbin*, 113 *Id.*, 687.
New Orleans vs. *Louisiana Construction Co.*, 129 *Id.*, 45, 47.
Chanute City vs. *Trader*, 132 *Id.*, 210, 213.

Point Five.

THERE WAS NO NON-FEDERAL QUESTION IN THE CASE WHICH JUSTIFIED THE DECISION BELOW AND WOULD THEREFORE REQUIRE THIS COURT TO DISMISS THE WRIT OF ERROR, NOTWITHSTANDING THE ERRONEOUS DECISION RESPECTING THE FEDERAL QUESTIONS.

It clearly appears here that the defence was dependent upon, and was presented exclusively under, the construction and application of the Statutes of the United States and the rules of navigation. The defense was inseparable from those statutes and rules, and there are no other legal principles applicable to the case which would support the judgment.

There are no "general principles of jurisprudence" which govern or apply to marine collisions.

The rule applicable here is stated as follows:

> "But when it appears that the Federal question was "decided erroneously against the plaintiff in error, we must "then reverse the case, undoubtedly, if there are no other "issues decided in it than that. It often has occurred, "however, and will occur again, that there are other points "in the case than those of Federal cognizance, on which "the judgment of the Court below may stand, those points "being of themselves sufficient to control the case.
>
> "Or it may be that there are other issues in the case, but "they are not of such controlling influence on the whole "case that they are alone sufficient to support the judg-"ment.
>
> "It may also be found that notwithstanding there are "many other questions in the record of the case, the issue "raised by the Federal question is such that its decision "must dispose of the whole case.
>
> "In the two latter instances there can be no doubt that "the judgment of the State Court must be reversed, and "under the new act this Court can either render the final "judgment or decree here, or remand the case to the State "Court for that purpose."
>
> *Murdock* vs. *City of Memphis*, 20 Wall., 590, 634.

Point Six.

BUT EVEN IF THERE IS A COLOR OF RIGHT TO A DISMISSAL ON THE QUESTION OF JURISDICTION, THE QUESTIONS PRESENTED BY THE WRIT OF ERROR CERTAINLY ARE NOT FRIVOLOUS.

A.

As heretofore pointed out, the record shows gross violations of United States Statutes and navigation rules, on the part of the plaintiff's intestate, which undoubtedly caused the accident in which he perished.

None of the numerous authorities cited by the defendant in error have any application here.

It is not contended that the deceased was an outlaw, and that the ferryboat could kill him with impunity. This action was brought to determine a question of negligence under established rules of navigation, and it having appeared that the deceased violated those rules, and it not having been shown that the violations did not and could not contribute to the disaster, it follows that the decision below was wrong The defendant in error refers to no evidence of, and the record will be scanned in vain for, any excuse for the neglect to observe the rules, or to show that the neglect was immaterial. There was conflicting evidence about the prevalence of daylight or darkness, which was one of the features of the case, but there was no evidence which made it proper to submit that question, as a question of fact, to the jury. The other violations of Federal law were positive and uncontradicted, and a cause of action could not exist without proof showing clearly that such violations not only probably *did* not, but certainly *could* not, contribute to the disaster.

Belden vs. *Chase*, *supra*.
The Pennsylvania. 19 Wall., 125, 126.
Richelieu Nav. Co. vs. *Boston Ins Co.*, 136 U. S., 408, 422.

The rule applicable here is stated in the case of *Dower* vs. *Richards* (151 U. S., 658, 667), cited by the defendant in error. It was there said :

" When, indeed, the question decided by the State Court

"is not merely of the weight and sufficiency of the evi-
"dence to prove a fact, but of the competency and legal
"effect of the evidence as bearing upon a question of
"Federal Law, the decision may be reviewed by this
"Court."

Cases like *Hoffman* vs. *Union Ferry Co.* (47 N. Y., 176; 68 *Id.*, 385) where the submission of questions of fact in cases of collision involving the rules of navigation was upheld, do not affect the question as presented here. It was there held that there was evidence from which the jury could properly infer, as a fact, that the violation of the rules did not contribute to the collision. There was no such evidence in the case at bar. Moreover, the decision there proceeded on the theory that "the peculiar rules adopted in Courts of Admiralty in cases of collision * * * cannot authorize a Court of common law to encroach upon the domain of the jury" (68 N. Y., 396). If this was intended to mean that a jury is competent to determine, without definite and controlling proof, that violations of the rules adopted and followed by the United States Courts of Admiralty in collision cases are immaterial, it is manifestly wrong, and the Court of Appeals of New York has not, since *Belden* vs. *Chase*, maintained such a doctrine, as clearly appears from the case of *The N. Y. H. Towboat Co.* vs. *N. Y. L. E. & W. R. R. Co.* (148 N. Y., 574). In the case just mentioned, the Court of Appeals reversed the trial Court because it did not dismiss the complaint on the facts presented by the plaintiff showing a violation of an Inspectors' Rule, and intimated that if it had been necessary, the Court would have followed *The Breakwater* (*supra*), which was partly decided on the special right of ferryboats, not fixed by Statute but maintained by the Courts of Admiralty.

B.

Defendant in error claims, in effect, that because the Court charged the requests made by plaintiff in error, after the refusals to dismiss the complaint, and some of these requests referred to Federal Statutes and rules of navigation, the Federal questions were thereby decided in favor of plaintiff in error, and it cannot now contend that rights which it claimed under Federal Statutes were decided adversely to it. But these requests were

made to meet the situation as it existed after the Court denied the motions to dismiss, and were framed with reference to the legal principles by which the Court decided the case should be controlled. In the view which the Court took, these requests all bore upon the questions which were to be determined by the jury. The errors here complained of, however, were committed in holding that the case should be submitted to the jury at all, in the face of violations of Federal law as to which there was no conflict of testimony, and which raised no questions for the jury.

C.

In the fourth point of the defendant in error, it is urged that there was evidence to show that the violation of the United States Statutes did not contribute to the accident, and hence the case was properly submitted to the jury.

To support this contention, selections from the evidence have been carefully made. It will be seen that *all* the selections relate exclusively to the question whether daylight or darkness prevailed at the time, and neither in the brief nor on the trial has any attempt been made to excuse or palliate the violations of law other than the absence of lights on the launch.

The defendant in error further urges, under this point, that the pilot, Baulsir, admitted that he would have been in fault for not avoiding the launch if he could have seen her when the vessels were 200 feet apart, and that the evidence made it a question for the jury whether he could have done so.

A persual of his testimony will show that he merely meant to say that he would have been in fault in running the launch down if he could have avoided her; but assuming there was fault on the part of the ferryboat, such fault would not excuse or condone the faults of the launch. In the Admiralty, if the fault existed, it would have led to an apportionment of the damages. At law, the launch's faults precluded recovery, notwithstanding a fault by the ferryboat.

Moreover, it is very doubtful if there would be a legal fault on the part of the ferryboat, even under the circumstances supposed. If the prior faults of the launch were such as to place the ferryboat *in extremis*, from a legal point of view, the fault of the latter was immaterial, even at common law.

The N. Y. H. Towboat Co. vs. *N. Y., L. E. & W. R. R. Co., supra.*

The mere statement by the pilot that he was in fault, would not subject the defendant below to liability, even if the fault of the ferryboat were the sole question under consideration, if the situation did not justify the legal conclusion.

Point Seven.

THE MOTION SHOULD BE DENIED.

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